

**Analysis of the Complaint and
Proposed Consent Order to Aid Public Comment
*In the Matter of TALX, Inc.,
File No. 061 0209, Docket No. C-***

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Agreement”) from TALX Corporation (“Proposed Respondent”). The Consent Agreement settles allegations that TALX has violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in connection with the provision of outsourced UCM services and employer verification services nationwide through a series of consummated acquisitions. Pursuant to the Agreement, TALX has provisionally agreed to be bound by a proposed consent order (“Proposed Consent Order”).

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

The purpose of the Agreement is to remedy anticompetitive effects, alleged in the Commission’s Complaint in this matter, that will likely result from the acquisitions by Proposed Respondent of James E. Frick Inc., Johnson & Associates, L.L.C., and certain assets and businesses of Gates McDonald & Company, Sheakley-Uniservice, Inc., UI Advantage, Jon-Jay Associates, Inc., and Employers Unity, Inc.

The Proposed Consent Order provides for relief in two markets where the Commission finds reason to believe that these acquisitions likely will have anticompetitive effects: the national market for outsourced unemployment compensation management (“UCM”) services, and the national market for outsourced employer verification services, also known as the market for verification of income and employment (“VOIE”) services.

The Proposed Consent Order is aimed at expediting the entry and expansion of competitors by, among other things, freeing past, as well as various current, TALX employees to take jobs with competitors and by granting the majority of TALX’s present long term contract customers the unilateral right to get out of those contracts and switch to another UCM provider. While the Commission usually typically prefers divestitures that immediately reset market shares (the sale of a plant in the manufacturing context, for example), unique circumstances combine in this matter to make it appropriate for the Commission to accept relief aimed at encouraging the movement of market share to competitors though self-selection by TALX’s customers, as opposed to mandating the transfer of arbitrary set of these service contracts. These circumstances include, but are not necessarily limited to, the personal service nature of the product, divergent customer preferences and needs, and the existence of several very small, but nevertheless viable,

competitors. The proposed remedy seeks to ensure that the entry and expansion necessary to ensure a competitive market can occur much more quickly than it would absent relief. More specifically, the Proposed Consent Order requires TALX to (a) allow many of its customers with long-term UCM contracts to terminate those contracts at the customers' option, (b) free many of its past and current employees from restrictions that would hamper their ability to be employed by UCM competitors, (c) provide, if requested, to certain former UCM customers of TALX, certain information related to UCM claims work retained by TALX, (d) give notice to certain customers of their right to cancel UCM contracts that are automatically renewed if not cancelled, and (e) not prevent or discourage any entity from supplying goods or services to a UCM competitor of TALX.

The Order also requires TALX to give to the Commission prior notice of future acquisitions in markets for UCM services and VOIE services.

II. The Respondent

TALX is a Missouri corporation that, in May 2007, became a wholly-owned subsidiary of Equifax, Inc. TALX's primary businesses are the provision of UCM services under the name "UC eXpress," and the provision of VOIE services under the name "The Work Number."

III. The Complaint

As alleged in the Commission's Complaint, TALX competes in markets for UCM services and VOIE services. UCM services consist, in part, of the managing, administering, and/or processing, on behalf of an employer, of unemployment compensation claims filed with a state or territory. VOIE services consist, in part, of the provision of employment and income verifications including, but not limited to, the collection, maintenance, or dissemination of information concerning the employment status and income of those employees. In order to provide such VOIE services, a VOIE provider must collect and maintain payroll data and other data relating to employment.

The Complaint alleges that the March 2002 acquisitions by TALX of James E. Frick, Inc. and of the UCM services division of Gates McDonald eliminated competition between the two acquired companies in the national market for UCM services. James E. Frick, Inc. and Gates McDonald were the two largest providers of UCM services prior to TALX's acquisition of both companies the same day. The Complaint also alleges that TALX's acquisitions of Johnson and Associates, L.L.C., the UCM assets of Sheakley-Uniservice, Inc., Jon-Jay Associates, and the unemployment tax management business, which includes UCM services, of Employers Unity, Inc. substantially reduced competition in the national market for UCM services.

The Complaint further alleges that TALX substantially reduced competition in the nationwide provision of VOIE services through the acquisitions of James E. Frick, Inc., and the VOIE businesses of Sheakley-Uniservice, Inc. and Employers Unity, Inc.

The Complaint notes that some firms, known as “alliance partners,” outsource to TALX some of the UCM services they sell to others. The largest amount of such outsourcing is done by ADP, Inc.

The Complaint alleges that each of the relevant markets is highly concentrated, and the consummated acquisitions increased concentration substantially, whether concentration is measured by the Herfindahl-Hirschman Index (“HHI”), or the number of competitively significant firms remaining in the market.

The Complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in either of the relevant markets. As alleged in the Complaint, entry into the market for the provision of outsourced UCM services to large multi-state employers is difficult and slow. According to the Complaint, among the factors that make entry into this market difficult and slow are the length of time it normally takes to make a sale, the maturity of the market, and the lengthy period necessary to establish a track record for successfully managing large volumes of unemployment compensation claims. The Complaint also alleges that entry and expansion in the provision of outsourced UCM services to large multi-state employers is made more difficult by the large number of customers that are tied to long-term contracts with terms as long as five- years. Prior to TALX’s acquisition of its leading competitors who can serve large employers with multi-state claims, the vast majority of industry contracts were renewable one year relationships. In recent years, TALX has successfully and vigorously pursued three and five year deals with its clients. The prevalence of long-term contracts and non-compete and non-solicitation agreements between TALX and its employees, which substantially reduce the number of experienced and talented employees available to be hired by TALX’s competitors and potential competitors, has made entry and expansion more difficult and slow.

The Complaint also alleges that entry into the market for VOIE services is difficult and slow. Among the factors that make entry into this market difficult and slow are, according to the Complaint, the need to acquire a sufficient scale and scope of payroll and employment data to attract and service a sufficient customer base, the difficulty of developing software to automate the VOIE process, and the need to build a reputation for reliability and security.

The Complaint alleges that the consummated acquisitions eliminated competition between TALX, and each of its competitors in the provision of outsourced UCM services and employer verification services nationwide. The Complaint further alleges that the consummated acquisitions enhance opportunities for TALX to increase prices unilaterally and to decrease the quality of services provided in each of the relevant markets. The acquisitions by TALX

eliminated the closest competitors able to serve large employers with claims in many states or nationwide.

The Complaint alleges that the consummated acquisitions 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, by substantially lessening competition in connection with the provision of outsourced UCM services and employer verification services nationwide. The Complaint further alleges that the Acquisitions described have eliminated direct and actual competition in the provision of both UCM and employer verification services. The acquisitions by TALX of its competitors have enhanced its ability to increase prices unilaterally and enhanced its ability to decrease the quality of services provided in each of the relevant lines of commerce, according to the Commission's Complaint.

IV. The Proposed Consent Order

As noted above, the Proposed Consent Order provides for relief in markets for UCM services and VOIE services.

Paragraph II. of the Proposed Consent Order prohibits TALX from enforcing against certain current and former employees who accept employment with certain UCM competitors of TALX certain types of covenants not to compete, not to solicit, and not to disclose trade secrets. Paragraph I.P.1. of the Proposed Consent Order lists some of those UCM competitors by name, and Paragraph I.P.2. lists criteria for identifying other such UCM competitors. Paragraphs I.DD., I.FF., and I.TT. of the Proposed Consent Order describe the types of restrictions on competition, solicitation, and trade secret disclosure that TALX would not be able to enforce in situations where Paragraph II. of the Proposed Consent Order is applicable.

Paragraph II. of the Proposed Consent Order divides the past and current employees subject to this paragraph into three categories: "Relevant Current Persons," "Relevant Past Persons," and "Other Relevant Current Persons." Appendix F to the Proposed Consent Order lists all of such Relevant Current Persons and divides them into five categories: Customer Relationship Managers, Account Managers, Unemployment Insurance Consultants, Hearing Representatives, and Tax Consultants. The third proviso to Paragraph II. of the Proposed Consent Order limits the number of Relevant Current Persons that are subject to Paragraph II. of the Proposed Consent Order to ten Customer Relationship Managers, four Account Managers, twenty-three Unemployment Insurance Consultants, five Hearing Representatives, and four Tax Consultants. In addition, the applicability of Paragraph II. of the Proposed Consent Order to a Relevant Current Person will end two years after such person's receipt of the notice that TALX is required to send such person pursuant to Paragraph VI.A. of the Proposed Consent Order.

The other two categories of past and current employees, "Relevant Past Persons," and "Other Relevant Current Persons," are defined in Paragraphs I.HH. and I.MM. of the Proposed Consent Order. There is no limit on the number of Relevant Past Persons and Other Relevant

Current Persons who are subject to Paragraph II. of the Proposed Consent Order; and that paragraph will apply to those persons for the full ten-year term of the Proposed Consent Order.

Paragraph III. of the Proposed Consent Order provides that TALX must allow certain customers with contracts for UCM services with a term longer than one year to terminate their contracts on 90 days notice if those customers outsource their UCM services to a competitor of TALX. Paragraph I.X. of the Proposed Consent Order specifies the customers covered by Paragraph III. of the Proposed Consent Order. The third proviso to Paragraph III. places an upper limit of \$10 million on the “Total Of Relevant Values Of Terminated Long Term Contracts,” within the meaning of Paragraph I.XX. of the Proposed Consent Order. In addition, the applicability of Paragraph III. of the Proposed Consent Order to a customer will end three years after such customer’s receipt of the notice that TALX is required to send such customer pursuant to Paragraph VI.B. of the Proposed Consent Order.

Paragraph IV. of the Proposed Consent Order provides, that at the request of a “Former UCM Customer,” within the meaning of Paragraph I.TT of the Proposed Consent Order. TALX must transfer certain specified customer file information to such customer. The information to be transferred would include data relating to open unemployment compensation claims and to state unemployment tax rates, and include documents generated in preparation for unemployment compensation hearings and appeals.

Paragraph V. of the Proposed Consent Order prevents TALX from entering into agreements that would prevent or discourage any entity from supplying goods or services to a UCM competitor of TALX. This paragraph does not apply to employment agreements.

Paragraphs VI.A., VI.B., and VI.C. of the Proposed Consent Order require TALX to give notice to certain current and former employees and to certain long-term contract customers of their rights under Paragraphs II. and III. of the Order.

Paragraph VI.D. of the Proposed Consent Order requires that TALX notify certain customers of their right to cancel UCM contracts that would otherwise be renewed automatically.

Paragraph VI.E. of the Proposed Consent Order requires the posting on Web sites of specified information concerning the rights of certain current and former employees of TALX and of certain UCM customers of TALX under Paragraphs II. and III. of the Order,

Paragraph VII.A. of the Proposed Consent Order prohibits TALX from entering into, or attempting to enter into, agreements to divide or allocate markets for UCM services.

Paragraph VII.B. of the Proposed Consent Order prohibits TALX from entering into, or attempting to enter into, any agreement requiring ADP, Inc. to subcontract to TALX the rendering of UCM services to a customer if such agreement precedes, rather than follows, ADP, Inc.’s agreement with such customer to provide UCM services. The purpose of Paragraph VII.B.

is to increase the ability of TALX's current and future competitors to compete against TALX for the business of providing UCM services to customers of ADP.

Paragraph VIII. of the Proposed Consent Order requires that, for ten (10) years, TALX give the Commission thirty (30) days advance notice before acquiring, or entering into a management contract with, a provider of UCM services or VOIE services.

Paragraph IX. of the Proposed Consent Order appoints Erwin O. Switzer to the position of Monitor/Administrator. The Monitor/Administrator will assist the Commission in monitoring TALX's compliance with the Proposed Consent Order, and will assist certain past and present employees of TALX and certain customers of TALX in exercising their rights under Paragraphs II. and III. of the Order.

Paragraphs X., XI. and XII. of the Proposed Consent Order require TALX to comply with certain reporting requirements to the Commission.

Paragraph XIII. provides that the Proposed Consent Order will terminate ten years after it goes into effect.