Federal Trade Commission
Protecting America's Consumers

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FTC Challenges Acquisitions by TALX Corp. that Stifled Competition in Unemployment Compensation Management and Employment Verification Services

The Federal Trade Commission announced today that it issued a complaint challenging a series of acquisitions by TALX Corporation that substantially lessened competition in the markets for outsourced unemployment compensation management (UCM) and verification of income and employment (VOIE) services. The Commission and TALX have reached an agreement settling the Commission's challenge.

TALX, which in May 2007 became a wholly-owned subsidiary of Equifax, Inc., had overall revenue of about $270 million in its last fiscal year. Its VOIE services are provided under the name The Work Number, its UCM services under the UC eXpress banner.

Unemployment compensation management consists of administering, on behalf of large, multi-state employers, unemployment compensation claims filed with a state or territory. VOIE services consists of providing income and employment information on behalf of employers to third parties, such as lending institutions.

In 2002 TALX was the nation's leading provider of outsourced VOIE services. It then began a series of acquisitions resulting in its obtaining market power in the UCM and VOIE businesses. First it acquired UCM/VOIE provider James E. Frick, Inc. and the UCM business of Gates McDonald & Company, a subsidiary of Nationwide Mutual Insurance Company. These acquisitions of the two largest UCM service providers eliminated competition between them in the national market for UCM services.

From June 2003 through November 2005, TALX purchased Johnson & Associates, LLC, most of the UCM and VOIE assets of Sheakley-Uniservice, Inc., TBT Enterprises, Inc. and its sister corporation, UI Advantage, Inc., Jon-Jay Associates, Inc., and the unemployment tax management business of Employers Unity, Inc. As alleged in the FTC's complaint, the Johnson, Sheakley-Uniservice, Jon-Jay, and Employers Unity acquisitions substantially reduced competition in the national market for UCM services, and the Frick, Sheakley-Uniservice, and Employers Unity acquisitions substantially reduced competition in the nationwide provision of VOIE services, both in violation of the Clayton Act and the FTC Act.

"TALX acted illegally," says Jeffrey Schmidt, Director of the FTC's Bureau of Competition, "by acquiring virtually all of its competition in a series of transactions. While each transaction individually may not have been problematic, the FTC looked at the cumulative effect of the acquisitions. This case sends a message that firms can't get away with unlawful acquisitions just because they take place in relatively small increments."

The complaint alleges that TALX's acquisitions have enhanced its ability to increase prices unilaterally and to decrease the quality of services in the relevant markets. In addition, the complaint notes, TALX has alliance partners, including Automated Data Processing, Inc. (ADP), Convergys, Inc., and Ceridian, Inc., which have agreements with TALX to outsource to TALX some or all of the UCM services they provide for their clients.

According to the Commission, the relevant markets for outsourced VOIE and UCM services are highly concentrated, and TALX's acquisitions substantially increased concentration. The Commission alleges that entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to counteract the anticompetitive effects of the acquisitions. The complaint also alleges that entry and expansion in the outsourced UCM market for large, multi-state employers is made more difficult by the large number of customers tied to long-term contracts. Entry and expansion is also made more difficult by non-compete and non-solicitation agreements between TALX and its employees, which reduce the number of experienced persons available for hiring by potential competitors.

The proposed settlement, which is subject to final approval by the Commission following a 30-day public comment period, would foster market entry and expansion by current and future competitors. The settlement would allow long-term TALX customers to terminate their contracts and eliminate non-compete clauses for former and current TALX employees. Specifically, the proposed order provides that:

- TALX may not enforce certain provisions of non-compete and non-solicitation agreements, and agreements not to disclose trade secrets against past and current employees who accept employment with certain competitors in the UCM services market. The order places a limit on the number of certain current employees who TALX must release from such restrictions.
- TALX must allow certain UCM customers whose contracts exceed one year to terminate their contracts on 90-days notice if they outsource their UCM services to a competitor. The order places an upper dollar-value limit on the amount of such contracts.
- TALX may not enter into agreements that would prevent or discourage any entity from supplying goods or services to a UCM competitor.
- TALX may not enter into, or attempt to enter into, agreements to divide or allocate markets for UCM services.
- TALX may not enter into, or attempt 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.

- For 10 years, TALX must give the Commission 30 days advance notice before acquiring, or entering into a management contract with, a UCM or VOIE service provider.

The Commission vote to accept the complaint and proposed consent order was 4-0. The FTC will publish an announcement regarding the agreement in the Federal Register shortly. The agreement will be subject to public comment for 30 days, beginning today and continuing through May 28, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form near the end of the public comment period be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

Copies of the complaint, proposed consent order, and an analysis of the complaint and proposed consent order to aid in public comment are available from the FTC's web site at http://www.ftc.gov and the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read “Competition Counts” at http://www.ftc.gov/competitioncounts.

MEDIA CONTACT:

Frank Dorman
Office of Public Affairs
202-326-2674

STAFF CONTACTS:

Sean Hughto
Bureau of Competition
202-326-2199

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Related Documents:

In the Matter of TALX Corporation, a corporation.
FTC File No.: 061 0209

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