



d. any claim under the Equal Access to Justice Act.

## Order

### I.

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "CCI" means Cooperative Computing, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Cooperative Computing, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "Triad" means Triad System Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3055 Triad Plaza, Livermore, California, 94550.

C. "MacDonald" means MacDonald Computer Systems, a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 25031 Avenue Stanford, Valencia, California 91355.

D. The "Acquisition" means the purchase of shares of Triad common stock pursuant to the Offer to Purchase by CCI dated October 23, 1996.

E. "Commission" means the Federal Trade Commission.

F. "CCI Products" means the CCI Database, Database Technology, and Documentation, and all technical system documentation and user documentation relating thereto, including, but not limited to, a description of all data elements and all other information necessary for the Acquirer to use and operate the products.

G. "CCI Database" means the CCI PartFind<sup>®</sup> Electronic Catalog Database data current as of the date of delivery to the Acquirer, for all the product lines and data elements contained in the database as of the date of the Acquisition.

H. "Database Technology" means the API, Server Software, Support Software, and TIMDD.

I. "API" means CCI's J-CON<sup>®</sup> application program interface for the CCI PartFind<sup>®</sup> Electronic Database, including all related documentation, current as of the date of the Acquisition.

J. "Server Software" means the CCI software utilized to retrieve vehicle data from the CCI Database when a valid request is received from a user, including all related documentation, current as of the date of the Acquisition.

K. "Support Software" means the CCI software and all related documentation or data, including, but not limited to, all documentation current as of the date of the Acquisition, and utilized to distribute, maintain or support the CCI Database, including but not limited to, all software for data entry, data extraction, and media creation.

L. "TIMDD" means all Triad Integration Module data definitions current as of the date of the Acquisition.

M. "Documentation" means all end user documentation associated with the CCI Products provided by CCI.

N. "Updates" means all additions, deletions and modifications to the CCI Database, which shall include updated data and information made available by Respondent to any of Respondent's customers as part of the Respondent's standard, commercially available electronic catalog product. Upon delivery of an Update, such Update shall be considered to be included in the term "CCI Database."

O. "VAR" means a person or entity in the business of distributing hardware and/or software systems to warehouses, jobber/retail stores and/or service dealers in the automotive aftermarket but excludes any person or entity whose primary business is the distribution, sale, or installation of automotive parts and accessories.

P. "Acquirer" means either MacDonald or the person or entity approved by the Commission to acquire the CCI Products pursuant to Paragraph II.B. of this Order.

Q. "Proprietary Rights" means all patents, patent applications, trade secrets, copyrights, trademarks and service marks, know-how, confidential information and other proprietary rights.

## II.

### **IT IS FURTHER ORDERED**that:

A. Respondent shall divest, absolutely and in good faith, at no minimum price, through a perpetual, royalty-free, transferable, assignable, and exclusive license with the right to use for any purpose, combine with other information, reproduce, modify, market and sublicense, the CCI Products in the United States and Canada. Provided, however, Respondent may retain the right to sell, license or otherwise provide the CCI Products to customers of CCI MIS systems until such time as CCI is able to integrate the Triad electronic catalog database to CEMIS systems, but in no event for more than six (6) months from the date of delivery of the Database, and provided, however, Respondent may retain the right to utilize the CCI Database Technology and Documentation to update, support and maintain an electronic catalog database for any CCI customer licensed by CCI prior to the end of the aforementioned six (6) month period.

B. Respondent shall divest the CCI Products as set forth in Paragraph II.A. to MacDonald, in accordance with the License Agreement entered into between CCI and MacDonald, dated February 13, 1997 (the "License Agreement"), no later than ten (10) days after the date on which this Order is made final. Provided, however, that in the event Respondent fails to divest the CCI Products to MacDonald because MacDonald, unilaterally and through no fault of Respondent, breaches the License Agreement, Respondent shall divest the CCI Products as set forth in Paragraph II.A. to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission within sixty (60) days after the date on which this Order is made final. The purpose of the divestiture of the CCI Products is to ensure the continued use of the CCI Products in the same business in which the CCI Products are used at the time of the Acquisition, in competition with Respondent, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the CCI Products, Respondent shall take such actions as are necessary to maintain the viability and marketability of the CCI Products, including but not limited to updating the CCI Database on a regular schedule, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the CCI Products.

### III.

IT IS FURTHER ORDERED that:

A. If Respondent has not divested the CCI Products, as required by Paragraph II of this Order, the Commission may appoint a trustee to divest the CCI Products. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A

days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

- b. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the CCI Products.
- c. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
- d. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B. c. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
- e. The trustee shall have full and complete access to the personnel, books, records and facilities related to the CCI Products or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
- f. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

- g. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the CCI Products.
- h. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
- i. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this Order.
- j. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- k. The trustee shall have no obligation or authority to operate or maintain the CCI Products.
- l. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### IV.

**IT IS FURTHER ORDERED**that:

A. Respondent shall deliver the CCI Products to the Acquirer in machine-readable or

Canada, any electronic catalog database, to be terminated by such VAR during the thirty (30) day period immediately prior to the first anniversary of the effective date of the License Agreement.

**V.**

**IT IS FURTHER ORDERED** that within fifteen (15) days after the date this Order is made final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraph II of this Order, and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs III and IV A., D., E., F. and G. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

**VI.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during normal office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to the Respondent, and without restraint or interference, to

SIGNED this      day of February, 1997.

**COOPERATIVE COMPUTING, INC.**

By: \_\_\_\_\_  
Glenn E. Staats  
President

**WEIL, GOTSHAL & MANGES LLP**

By: \_\_\_\_\_  
Thomas A. Roberts  
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767 Fifth Avenue  
New York, New York 10153  
Counsel for Cooperative Computing, Inc.

**BUREAU OF COMPETITION**

\_\_\_\_\_  
Joseph G. Krauss  
Counsel for the Federal  
Trade Commission

**APPROVED:**

\_\_\_\_\_  
M. Howard Morse  
Assistant Director  
Bureau of Competition

Senior Deputy Director  
Bureau of Competition

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William J. Baer  
Director  
Federal Trade Commission

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of )  
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COOPERATIVE COMPUTING, INC., ) Docket No.  
a corporation. )  
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**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cooperative Computing, Inc. ("CCI") has entered into an Agreement and Plan of Merger with Triad Systems Corporation ("Triad"), whereby CCI has agreed to acquire all of the outstanding shares of Triad and that CCI has commenced a tender offer for the outstanding shares of Triad, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such acquisition, 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, 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:

**A. THE RESPONDENT**

1. Respondent Cooperative Computing, Inc. ("CCI") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 6207 Bee Cave Road, Austin, Texas 78746-5146.

2. At all times relevant herein, respondent has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, 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.

8. An electronic automotive parts catalog or 'electronic catalog' is a database of aftermarket automotive part numbers that is searchable by make, model and year of car. An electronic catalog quickly and efficiently determines, with make, model and year of automobile information, which automotive part number, and hence, which automotive part is needed for a particular automobile. An electronic catalog is a very extensive database, containing millions of part numbers for domestic and foreign cars.

9. One relevant line of commerce within which to analyze the effects of CCI acquisition of Triad is the market for electronic catalogs. There are no economic substitutes for electronic catalogs. Paper catalogs, the only possible substitute for an electronic catalog, are inadequate substitutes because paper catalogs are cumbersome and time consuming to use. The ability of warehouse distributors and jobbers to access information about parts availability and supply the required product is critical to their success, since the industry standard for same day repair service causes service dealers to require delivery of needed parts within 30 minutes. Electronic catalogs are sold as stand-alone products and as parts of integrated MIS systems.

10. Another relevant line of commerce within which to analyze the effects of CCI acquisition of Triad is the market for MIS systems integrated with an electronic catalog. An MIS integrated with an electronic catalog enables users to access the vast inventory of automotive part numbers of hundreds of automotive part manufacturers on the same computer terminal as the MIS. Customers often demand an MIS integrated with an electronic catalog to be able to electronically transfer automotive parts data from the electronic catalog to a purchase order in the MIS. This transfer of data is important because it saves time and eliminates any risk of human error during the process of rekeying automotive part numbers into purchase orders.

11. The relevant geographic market within which to analyze the effects of CCI acquisition of Triad is either the United States or North America. Many automotive parts and part numbers are unique to the United States and Canada. While software is easily transported, there are no imports into the United States of either electronic catalogs or integrated MIS systems with electronic catalogs.

#### **D. CONCENTRATION**

12. The relevant U.S. or North American markets for electronic catalogs and for MIS systems integrated with an electronic catalog are highly concentrated.

13. There are only a limited number of providers of electronic catalogs. In addition to CCI and Triad, there is only one other firm, Profit-Pro, Inc. ("Profit-Pro"), which develops and sells an electronic catalog for the independent automotive aftermarket. Triad sells both a stand-alone catalog and a catalog integrated with an MIS system, while CCI only sells its catalog integrated with an MIS system. CCI and Triad are, nonetheless, substantial, direct competitors. The electronic catalog offered by Profit Pro, Inc. is considered inferior compared to the CCI and

Triad catalogs, in the size of its database, the accuracy of the part numbers in the database, and the speed with which it is updated. Profit-Pro is a weak, fringe competitor with a small market share.

14. One closed automotive aftermarket distribution network and one large automotive aftermarket retail chain of stores have their own, internally developed electronic catalog. These two electronic catalogs are not available to the independent automotive aftermarket. Moreover, these two electronic catalogs are designed to meet the specific needs of those firms and therefore they have a very limited database of automotive parts compared to the electronic catalogs of CCI and Triad. Therefore, these two catalogs do not constrain the pricing of electronic catalogs by CCI or Triad.

15. Triad and CCI are the dominant providers of MIS systems integrated with an electronic catalog, together controlling approximately 70% of the market. The merger of CCI and Triad would increase the Herfindahl-Hirschman Index ("HHI") over 1200 points to over 3900. Aside from CCI and Triad, all other firms selling an MIS integrated with an electronic catalog rely upon Triad or Profit-Pro for their electronic catalog. These fringe firms do not constrain pricing nor in any other way substantially impact competition for the development and sale of MIS systems integrated with an electronic catalog.

#### **E. CONDITIONS OF ENTRY**

16. De novo entry or fringe expansion into the relevant markets which would be sufficient to deter or defeat reductions in competition resulting from the CCI acquisition of Triad would not be timely or likely. Developing an electronic catalog would require an expenditure of substantial sunk costs and would be time-consuming. Electronic catalog data must be entered manually into a database because the electronic parts data is received in a different format from each of hundreds of automotive parts manufacturers. Entry with a catalog covering only a fraction of available automotive parts would not be acceptable to most warehouse distributors and jobbers.

#### **F. EFFECTS OF THE PROPOSED ACQUISITION**

17. The proposed acquisition by CCI of Triad may substantially lessen competition in the United States or North American markets for electronic catalogs and for MIS systems integrated with an electronic catalog by, among other things:

- a. increasing concentration substantially in highly concentrated markets;
- b. eliminating substantial, direct head-to-head competition between CCI and Triad;
- c. substantially increasing the risk of unilateral exercise of market power;
- d. increasing prices for electronic catalogs and MIS systems integrated with an electronic catalog; and
- e. reducing service to customers of electronic catalogs and MIS systems integrated with an electronic catalog.

**G. VIOLATIONS CHARGED**

## **ANALYSIS TO AID PUBLIC COMMENT ON THE PROVISIONALLY ACCEPTED CONSENT ORDER**

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Cooperative Computing, Inc. ("CCI").

The proposed Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) 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 Agreements proposed Order. The purpose of this analysis is to facilitate public comment on all aspects of the proposed Order, including public comment with respect to the suitability of MacDonald Computer Systems ("MacDonald") as a proposed licensee.

The Commission's investigation of this matter concerns a proposed acquisition by CCI of Triad Systems Corporation ("Triad"). In October 1996, CCI entered into a merger agreement with Triad and commenced a tender offer for all of the outstanding voting securities of Triad. Under the terms of the tender offer, Triad shareholders will receive \$9.25 per share, or a total of approximately \$181 million. Immediately prior to the CCI acquisition of Triad, Hicks, Muse, Tate & Furst ("Hicks Muse"), a private investment firm based in Dallas, Texas, will acquire over 50 percent of CCI stock and gain control of CCI.

The Agreement Containing Consent Order would, if finally accepted by the Commission, settle charges that the CCI acquisition of Triad may substantially lessen competition in the development and sale of (1) electronic catalogs and (2) management information systems or "MIS" systems integrated with an electronic catalog, in the United States or in North America. The Commission has reason to believe that CCI's agreement to acquire Triad violates Section 5 of the Federal Trade Commission Act and that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates likely anticompetitive effects.

### The Proposed Complaint

According to the Commission's proposed complaint, CCI is a privately-held company that develops and markets management information system software for the automotive aftermarket, with annual sales of approximately \$43 million. CCI offers a portfolio of software products that assist auto parts distributors and retailers to track their parts inventory. CCI has developed and markets with its software a proprietary database of auto parts for domestic and foreign automobiles.

Triad, a publicly-held Livermore, California-based company, similarly develops and markets management information system software for the automotive aftermarket and for other

industries. Triad also develops and sells a proprietary database of auto parts for domestic and foreign automobiles. Triad has had annual sales of approximately \$175 million, including approximately \$90 million attributable to sales to the automotive parts aftermarket.

According to the Commission's proposed complaint, one relevant line of commerce within which to analyze the effects of CCI

integrated with an electronic catalog rely upon Triad or Profit-Pro for their electronic catalog. The complaint alleges that these fringe firms do not constrain pricing nor in any other way substantially impact competition for the development and sale of MIS systems integrated with an electronic catalog.

The complaint further alleges that de novo entry or fringe expansion into the relevant markets which would be sufficient to deter or defeat reductions in competition resulting from the CCI acquisition of Triad would not be timely or likely. According to the proposed complaint, developing an electronic catalog would require an expenditure of substantial sunk costs and would be time-consuming. Electronic catalog data must be entered manually into a database because the electronic parts data is received in a different format from each of hundreds of automotive parts manufacturers. Entry with a catalog covering only a fraction of available automotive parts would not be acceptable to most warehouse distributors and jobbers.

The proposed complaint alleges, finally, that the acquisition by CCI of Triad may substantially lessen competition by, among other things, eliminating substantial, direct head-to-head competition between CCI and Triad, likely resulting in increased prices and reduced services for electronic catalogs and MIS systems integrated with an electronic catalog.

#### The Proposed Consent Agreement

The proposed Order accepted for public comment contains provisions that would require CCI to divest CCI's electronic catalog to MacDonald. The proposed Order would specifically require CCI to divest, absolutely and in good faith, through a perpetual, royalty-free, transferable, assignable, and exclusive license with the right to use for any purpose, combine with other information, reproduce, modify, market and sublicense, CCI

purpose of these provisions is to ensure that MacDonald becomes a viable competitor to CCI, thereby fostering a competitive environment for the sale of MIS systems integrated with an electronic catalog.

In the event that CCI fails to divest the CCI Products to MacDonald because MacDonald, unilaterally and through no fault of CCI, breaches the License Agreement, CCI is required under the proposed Order to divest to another acquirer that is approved beforehand by the Commission, within sixty (60) days after the date on which the Order is made final. If CCI fails to divest, the proposed Order provides for the appointment of a trustee, to accomplish the required divestiture.

Pending the required divestiture, CCI is required, under the proposed Order, to maintain the viability and marketability of the CCI electronic catalog, by among other things, updating the CCI database on a regular schedule. In order to assist the acquirer, the proposed Order prohibits CCI from preventing employees from working for the acquirer, and from entering into long-term contracts with firms in the business of distributing hardware and/or software systems to warehouses, jobber/retail stores and/or service dealers in the automotive aftermarket, that might interfere with the acquirer's ability to obtain customers.

This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.