

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

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| In the Matter of |) | |
| |) | DOCKET NO. C-3757 |
| COOPERATIVE COMPUTING, INC., |) | |
| a corporation. |) | DECISION AND ORDER |
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The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of Cooperative Computing, Inc. ("CCI"), and Triad Systems Corporation ("Triad"), and it now appearing that36 036 03

1. Respondent Cooperative Computing, Inc., 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.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

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 Systems 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 PartFinder® 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® application program interface for the CCI PartFinder® 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 CCI's MIS 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

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(I) 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 of this Order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

- a. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) 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 other appropriate usable form.
- B. After the CCI Products have been divested, Respondent shall not exercise any right it may have, whether at common law, in equity, or in bankruptcy or reorganization (including through obtaining any equity interest in a reorganized debtor) or otherwise, to

consultation with knowledgeable employees of Respondent for a period of time sufficient to ensure that the Acquirer's personnel are adequately trained in the sources and processing of the data contained in the CCI Products. Respondent, however, shall not be required to continue providing such assistance for more than twelve (12) months from the date of the divestiture and for no more than three hundred and fifty (350) hours during that twelve month period of time.

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 interview officers, directors, or employees of the Respondent, who may have counsel present.

VII.

IT IS FURTHER ORDERED