

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of

**JULY 24, 2013 CIVIL INVESTIGATIVE DEMANDS
ISSUED TO NATIONAL PROCESSING CO. AND
VANTIV, INC.**

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)
) **File No. 1323105**
)
) **September 6, 2013**
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consumers paid to the A+ *Ft* defendants. Vantiv acquired NPC as a wholly-owned subsidiary in November 2010.

On July 24, 2013, the Commission issued a separate CID to each of the Vantiv Entities as part of its investigation into the Vantiv Entities' role in, and knowledge of, the illegal acts and practices of the A+ *Ft* defendants. The documents sought in these CIDs (the "July 24, 2013 CIDs") will help the Commission evaluate whether the Vantiv Entities violated the FTC Act or the TSR. Each CID contains 14 identical document production specifications and a single interrogatory requesting an explanation for the spoliation, if any, of responsive documents.

On August 6, 2013, after it issued the CIDs, the Commission served the Vantiv Entities with subpoenas under Fed. R. Civ. P. 45. The subpoenas seek the same documents as the CIDs. Commission counsel issued these subpoenas, in part, because the presiding judge in the A+ *Ft* enforcement action had suggested that Commission counsel consider sharing any documents produced by the Vantiv Entities with the court-appointed receiver in that enforcement action. However, as a consequence of statutory and regulatory restrictions, Commission counsel could not readily share documents produced in response to a CID with the receiver.¹ The return date on the Rule 45 subpoenas was August 19, 2013. On that date, in a letter to Commission counsel, the Vantiv Entities objected to the subpoenas without producing any documents.

On August 15, 2013, the Vantiv Entities responded to the issuance of the Commission's CIDs by filing a Petition to Quash.² In their Petition to Quash, the Vantiv Entities argue that the Commission's authority to issue the CIDs terminated when Commission counsel issued Rule 45 subpoenas seeking the same information in the A+ *Ft* enforcement action.

II. ANALYSIS

The Commission has broad authority under 15 U.S.C. §57b-1 to issue CIDs to further any "Commission investigation"—*ie*, "any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. §57b-1(a)(2). The Commission may issue CIDs at any time before it starts an "adjudicative proceeding." 15 U.S.C. § 57b-1(j)(1).

It is settled that, until the Commission names a person as a defendant or a respondent in a complaint, the Commission is not engaged in an adjudicative proceeding with regard to that person and remains solely in an investigative posture. *Gibson v. F.T.C.*, 445 F.2d

¹ Documents produced to the Commission in response to a CID are non-public, and their disclosure is subject to various statutory and regulatory restrictions. 15 U.S.C. §57b-2; 16 C.F.R. §4.10. Documents produced to the Commission in response to Rule 45 subpoenas are not subject to these restrictions.

² 15 U.S.C. §57b-1(f) and 16 C.F.R. §2.10. This Petition stayed compliance with the CIDs' original August 19, 2013, return date. 16 C.F.R. §2.10(b).

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III. CONCLUSION

For all the foregoing reasons,

IT IS HEREBY ORDERED THAT the Petition of Vantiv, Inc. and National Processing Co. be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Petitioners Vantiv, Inc. and National Processing Co. shall comply in all respects with the July 24, 2013 CIDs on or before September 13, 2013.

By the Commission.

Donald S. Clark
Secretary