

~~PUBLIC~~

UNITED STATES OF AMERICA

07 03 2017  
587326

ORIGINAL

favor economic analysis of likely competitive effects and harm not speculation based solely on an alleged market structure

7 R W K H H [ W H Q W W K H & R P S O D L Q W ¶ V L Q F A N D U E L R E G I S T R A T I O N S W R U \ V W  
the allegations alleged therein.

RESPONSE TO SPECIFIC ALLEGATIONS

I. NATURE OF THE CASE

1. FanDuel denies the allegations contained in Paragraph 1 of the Complaint, except FanDuel admits that (a) it competes with many fantasy sports, sports entertainment, and other gaming and recreation companies; and (b) it has invested hundreds of millions of dollars in efforts to drive growth, awareness and trust in its product offerings.

2. FanDuel denies the allegations contained in Paragraph 2 of the Complaint, except that FanDuel admits that (a) it continues to strive towards profitability and (b) there were significant legal and regulatory issues that arose across multiple states in 2015 and 2016, which continue today and into the foreseeable future; and (c) the merger will provide significant benefits to consumers.

3. FanDuel denies the allegations contained in Paragraph 3 of the Complaint and D Y H U V W K D W W K H & R P P L V V L R Q ¶ V V H O H F W L Y H T X R W D W L R Q communications, offered without dates or context, is misleading as FanDuel respectfully refers the Commission to the quoted documents, noting the dates on which these documents were created, for a complete and accurate description of their contents.

II. BACKGROUND

A. Jurisdiction

4. FanDuel admits the facts contained in Paragraph 4 of the Complaint, except to the extent that Paragraph 4 contains legal conclusions to which no response is required.

5. FanDuel admits the facts contained in Paragraph 5 of the Complaint, except to the extent that Paragraph 5 contains legal conclusions to which no response is required.

B. Respondents

6. FanDuel lacks information to respond to allegations in Paragraph 6 of the Complaint concerning the corporate structure and financial performance of DraftKings.

LQIRUPDWLRQ DQG EHOLHI )DQ'XHO EHOLHI provider in DIW. LQJV terms of entry fees and revenues.

7. FanDuel admits the allegations contained in Paragraph 7 of the Complaint, with WKH H[FHSWLRQ RI WKH &RPSODLQW¶V DOOHJDWLRQ FRQFH revenue, which FanDuel is unable WR DGPLW RU GHQ\ GXH WR WKH DPELJXD LQIRUPDWLRQ DQG EHOLHI )DQ'XHO Largest DFS Provider in terms of entry fees and revenues.

C. The Merger

8. FanDuel admits the allegations contained in Paragraph 8 of the Complaint.

III. DFS INDUSTRY BACKGROUND

9. FanDuel admits the allegations contained in Paragraph 9 of the Complaint only to the extent they describe certain types of fantasy sports.

10. FanDuel denies the allegations contained in Paragraph 10 of the Complaint, except that FanDuel admits that fantasy sports include a multitude of variants involving different scoring systems, roster construction and selection methods, entry fee price points and prize distribution criteria, duration of leagues/contests and other factors that represent a continuum of different product offerings comprising fantasy sports.

11. FanDuel denies the allegations contained in Paragraph 11 of the Complaint to the extent they suggest that all DFS contests are ~~short~~ ~~duration~~.

12. On information and belief, FanDuel admits the allegations contained in Paragraph 12 of the Complaint, to the extent they describe many of the contests currently offered by FanDuel and DraftKings.

13. FanDuel denies the allegations contained in Paragraph 13 of the Complaint to the extent they purport to describe all DFS contests.

14. )DQ'XHO DGPLWV WKDW D FRQWHVW RQ )DQ'XHO ¶V life sporting event on which the contest is based ~~commercial~~ ~~for~~ FanDuel admits the remaining allegations contained in Paragraph 14 of the Complaint only as the allegations relate to )DQ'XHO ¶V FRQWHVWV )DQ'XHO RWKHUZZLVH GHQLHV WKH DFS products as the same.

15. FanDuel denies the allegations in Paragraph 15 of the Complaint ~~to the~~ ~~extent~~ the DP ELJXLW\ RI WKH WHUP ³UHJXODUO\ ´ H[FHSW WKDW XSRQ DFS providers, including FanDuel, offer a variety of contests at a wide range of sizes, including leagues of friends playing together in groups ~~for~~ ~~16~~ participants.

16. FanDuel denies the allegations contained in Paragraph 16 of the Complaint, and  
VSHFLILFDOO\ GHQLHV WKDW FRPPLVLRQ LV WKH VROH<sup>3</sup> S  
play DFS contests, except that FanDuel admits that (a) some contests require users to pay

20. FanDuel avers that it lacks the knowledge or information to respond to allegations concerning all DFS providers in Paragraph 20 of the Complaint.

21. FanDuel denies the allegations contained in Paragraph 21 of the Complaint, except that it admits that different users may enter different contests, submit different volumes of entry fees, and win different amounts of prize. FanDuel admits that it uses the terms HVP and casual users, among other terms to describe its customers. FanDuel avers that it lacks the business information.

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IV. PURPORTED RELEVANT MARKET

22. FanDuel denies the allegations contained in Paragraph 22 of the Complaint, and specifically denies WKDW WKH SURYLVLRLRQ RI 3SDLG ' )6 ' FRQVWLWX

A. Purported Relevant Product Market

23. [REDACTED]

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26. FanDuel denies the allegations contained in Paragraph 26 of the Complaint, and  
VSHFLILFDOO\ GHQLHV WKDW WKH SURYLVLRQ RI ³SDLG ')6´

27. FanDuel denies the allegations contained in Paragraph 27 of the Complaint, and  
VSHFLILFDOO\ GHQLHV WKDW WKH SURYLVLRQ RI ³SDLG ')6´

28. FanDuel denies the allegations contained in Paragraph 28 of the Complaint, and  
VSHFLILFDOO\ GHQLHV WKDW WKH SURYLVLRQ RI ³SDLG ')6´

29. FanDuel denies the allegations contained in Paragraph 29 of the Complaint, and  
specifically denies that it constitutes a separate product market.

30.





37. FanDuel denies the allegations contained in Paragraph 37 of the Complaint, except that it admits that it has offered different types of contests.

38. FanDuel denies the allegations contained in Paragraph 38 of the Complaint, except that it admits that FanDuel users can and do switch among other fantasy sports product substitutes and a range of other entertainment options and activities focused on a return investment of capital; and (d) commissions have increased on certain FanDuel contests in 2015 and 2016.

B. Purported Relevant Geographic Market

39. FanDuel avers that to the extent that Paragraph 39 of the Complaint contains legal conclusions, no response is required. To the extent a response is required, FanDuel denies the allegations in Paragraph 39.

40. )DQ'XHO WDNHV QR SRVLWLRQ RQ WKH FKDUDFWHU specific allegation concerning a particular jurisdiction. FanDuel admits that it must comply with certain states regulations in order to offer products to residents of those states. FanDuel further avers that it lacks the knowledge and information to respond to allegations regarding the operations of other fantasy sports providers who may be subject to such regulations.

41. FanDuel denies the allegations in Paragraph 41 of the Complaint given the DPELJXLW\ RI WKH WHUP <sup>3</sup>JHQHUDOO\ ' )DQ'XHO IXUWKHU D information to respond to allegations regarding the operations of other DFS providers.

42. FanDuel avers that to the extent that Paragraph 42 of the Complaint contains legal conclusions, to which no response is required. To the extent a response is required, FanDuel

denies the allegations in Paragraph 42, except that it admits it competes with many fantasy sports, sports entertainment, and other gaming and recreation companies.

43. FanDuel avers that to the extent that Paragraph 43 of the Complaint contains legal conclusions, no response is required. To the extent a response is required, FanDuel denies the allegations in Paragraph 43, except that FanDuel admits that it competes with many fantasy sports, sports entertainment, and other gaming and recreation companies in the United States, wherever they are located.

48. FanDuel denies the allegations contained in Paragraph 48 of the Complaint

VI. PURPORTED ANTICOMPETITIVE EFFECTS

49. FanDuel denies the allegations contained in Paragraph 49 of the Complaint.

50. FanDuel denies the allegations contained in Paragraph 50 of the Complaint.

)DQ'XHO IXUWKHU DYHUV WKDW WKHn8RtPleLwteb R0fjAs VHOHF

that (a) in 2016, its products faced regulatory challenges; (b) its growth relies on outside investors to provide capital; and (c) it competes with many fantasy sports, sports entertainment, and other gaming and recrea7(c)-,i toc>(y)207(a)4(7.ni TJ 0 1 72.024 r)e09r5-,i toc7(a)4(7(c)-,i toc>(y



or communications, offered without context, is misleading as framed and FanDuel respectfully refers the Court to the quoted documents.

69. FanDuel denies the allegations contained in Paragraph 69 of the Complaint, except that FanDuel admits that it engaged in significant costcutting efforts in 2016, including large reductions in marketing and promotional BT 1 0 ar ctfullre 1 0 v( c)4(g)10(adm)-(e)4(lons i1 0 0

competition with many fantasy sports, sports entertainment, and other gaming and recreation companies in the United States and FanDuel further avers that it lacks the knowledge and information to form a belief regarding the truth of the allegations in Paragraph 73 as they pertain to DraftKings.

74. FanDuel denies the allegations contained in Paragraph 74 of the Complaint. FanDuel further avers that it lacks the knowledge and information to form a belief regarding the truth of the allegations in Paragraph 74 as they pertain to DraftKings.

75. FanDuel admits that it competes with many fantasy sports, sports entertainment, and other gaming and recreation companies, including FanDuel, to offer a broad variety of sports and contest formats.

76. FanDuel denies the allegations contained in Paragraph 76 of the Complaint, except it admits it competes with many fantasy sports, sports entertainment, gaming and recreation companies in the United States. FanDuel further avers that it lacks the knowledge and information to form a belief regarding the truth of the allegations in Paragraph 76 as they pertain to DraftKings.

77. FanDuel denies the allegations contained in Paragraph 77 of the Complaint, except that FanDuel admits that it no longer offers contests based on college sports today.

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or communication, offered without context, is misleading as framed and FanDuel respectfully refers the Court to the quoted documents. FanDuel further avers that it lacks the knowledge and information to form a belief regarding the truth of the allegations in Paragraph 77 as they pertain to DraftKings.

VII. PURPORTED LACK OF COUNTERVAILING FACTORS

A. Purported Barriers to Entry and Expansion

78. FanDuel denies the allegations contained in Paragraph 78 of the Complaint.

79. FanDuel avers that it lacks the knowledge and information to form a belief regarding the truth of the allegations in Paragraph 79 of the Complaint as they pertain to other firms, but specifically denies that there are significant barriers to entry or expansion.

80. FanDuel denies the allegations contained in Paragraph 80 of the Complaint given WKH DPELJXLW\ RI WKH WHUP 3FRQFHUQV ´ )DQ'XHO IXUWK information to form a belief regarding the truth of the allegations in Paragraph 80 as they pertain to other firms, but specifically denies that there are significant barriers to entry.

81. FanDuel avers that it lacks the knowledge and information to form a belief regarding the truth of the allegations in Paragraph 81 of the Complaint as they pertain to other firms, but specifically denies that there are significant barriers to entry.

B. Efficiencies

82. FanDuel denies the allegations contained in Paragraph 82 of the Complaint.878Econtant



VIII.

8. 7KH FRPELQDWLRQ RI )DQ'XHO¶V DQG 'UDIW.LQJV¶ procompetitive. The merger will result in substantial ~~merger~~ specific efficiencies, cost savings, innovation, and other procompetitive effects that will directly increase the consumer value proposition. These benefits greatly outweigh any and all purported anticompetitive effects.
9. FanDuel reserves the right to assert other defenses as they become known to FanDuel.

WHEREFORE, having fully answered the Complaint, FanDuel ~~and~~ requests that the  
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 HQWLUHW\ ZLWK SUHMXGLFH DZDUG )DQ'XHO LWV FR  
 UHDVRQDEOH DWWRUQH\¶ IHHV DV PD\ EH DOORZHG E\

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
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Washington, DC 20580  
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I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Notice of Electronic Service

**I hereby certify that on July 03, 2017, I filed an electronic copy of the foregoing FanDuel Answer, with:**

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Chief Administrative Law Judge  
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Washington, DC, 20580

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**I hereby certify that on July 03, 2017, I served via E-Service an electronic copy of the foregoing FanDuel Answer, upon:**

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