UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Antitrust Division U.S. Department of Justice 600 E Street, N.W., Ste. 9500 Washington, D.C. 20530 Plaintiff, v. SUNGARD DATA SYSTEMS, INC. 1285 Drummers Lane Wayne, PA 19087 and COMDISCO, INC., 6111 North River Road Rosemont, IL 60018 Defendants.	)	Civil No.: 01-2196 (ESH)

REDACTED COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin SunGard Data Systems, Inc. ("SunGard") from acquiring certain assets of Comdisco, Inc. ("Comdisco") and thereby substantially lessening competition in the sale of shared hotsite disaster recovery services for large scale enterprise computer processing centers in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The United States seeks equitable relief against the Defendants named herein and

REDACTED VERSION

configuration, communications infrastructure, recovery objectives and other specific requirements differ from customer to customer, and providers of these services bid and/or negotiate on a customer-by-customer basis. The vast majority of shared hotsite revenues are from sales to customers that demand recovery of their critical applications from large scale enterprise computer processing centers within one to four days. Other types of disaster recovery services are not economic substitutes for the recovery of these mission-critical applications within the RTOs and other demands of such customers. For example, while a dedicated remote processing solution can meet and exceed the recovery capabilities of hotsites, its cost is many times higher than the costs of shared hotsite services for the same applications. The primary customers of shared hotsite services -- large scale enterprises with mission-critical applications on mainframes or high-end server platforms -- would not, in response to a significant price increase substitute away from shared hotsites towards dedicated processing or other alternatives to any significant extent. Shared hotsite services for large scale enterprise computer processing centers constitute a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

23. North America is the relevant geographic market for shared hotsite services for large scale enterprise computer processing centers within the meaning of Section 7 of the Clayton Act. When selecting a hotsite vendor, clients with data centers in the United States generally will only consider firms with hotsite locations in the United States or Canada.

C. Market Shares

24. The only significant vendors of shared hotsite services for large scale enterprise computer processing centers are SunGard, Comdisco, and IBM, thus the market is already highly

concentrated. Based on year 2000 revenues for shared hotsite services sold to customers for all types of computer systems, not simply those in our relevant market, SunGard had revenues of approximately $**[REDACTED TEXT]** million (**[REDACTED TEXT]** % share), Comdisco had approximately $**[REDACTED TEXT]**million (**[REDACTED TEXT]**% share) and IBM had $**[REDACTED TEXT]**million (**[REDACTED TEXT]**% share). A few fringe firms that collectively account for less than % of all shared hotsite revenues serve a small group of niche customers. These market share figures are a good proxy for the market shares in our relevant market. Using a measure of market concentration called the Herfindahl-Hirschman Index or "HHI" (defined and explained in Appendix A), the market as measured by sales revenues is already highly concentrated with an HHI of **[REDACTED TEXT]** . The proposed acquisition would further increase the HHI by more than **[REDACTED TEXT]** , to just under **[REDACTED TEXT]** and leave only two significant competitors in the market.

D. Likely Effects on Competition

25. The proposed acquisition will eliminate substantial direct competition between SunGard and Comdisco, and would likely result in a significant increase in prices and/or a reduction in service competition in the market for shared hotsite services for large scale enterprise computer processing centers in North America.

26. The proposed acquisition would eliminate competition between two of only three major providers of these services, thereby reducing competitive pressures to lower price and provide better service. Customers often purchase these services through some form of competitive bidding process in which two or three of the group comprised of Comdisco, SunGard, and IBM react to each others' bid prices and services, and customers are able to use the

competitive dynamics of the bid process to secure lower pricing and better service terms. While all three vendors are generally recognized as capable vendors, there are differences in pricing, services, or reputation that differentiate the vendors in various ways for different customers. For many customers, and in many bid situations, Comdisco and SunGard have been viewed as the two closest, and sometimes the only, bidders for reasons including price, proximity of hotsite locations, terms of service, platform focus and capabilities, or reluctance of the customer to have IBM as their disaster recovery vendor because IBM is already their major equipment vendor or a significant business competitor to the customer. For such customers, the proposed acquisition combines the two closest competitors, substantially lessening their ability to use competition between vendors as an effective negotiating tool.

27. Most shared hotsite service agreements are three to five years in duration; however, customers frequently renegotiate with their existing supplier for an extension of their contracts such as when they wish to purchase additional shared hotsite coverage for modified hardware or software applications. Customers benefit from the presence of competitive shared hotsite providers when they are extending the length of their contracts, and to an extent even when they are modifying but not extending their contracts. Where new or additional services are being acquired, the price and quality of the services being offered by the customer's incumbent supplier is to some extent constrained by the presence of actual or potential rival suppliers. Where the customer's contract is being extended, the terms of the extension will be more favorable to the customer if the incumbent would face significant competition had the customer not renewed, since the customer always has the option not to extend its contract at all. In each of these scenarios, therefore, the ability of customers to maintain bargaining power vis a vis their

incumbent supplier is dependent on actual or potential competition from rival suppliers.

28. The competitive harm resulting from the proposed acquisition is not likely to be prevented by new entry into the relevant market. Indeed, there has been no new significant entry into the market since 1989. For entry to prevent injury to competition, it would have to be timely, likely, and on a sufficient scale to prevent an anticompetitive price increase post-merger. Developing the facility infrastructure, including data centers, computer equipment, communications infrastructure, and expert personnel, with sufficient scale and scope to satisfy the demands of customers and compete effectively against the two post-acquisition incumbents would require an investment that an entrant is unlikely to find profitable. Given the maturity of the market, the prevalence of multiyear customer contracts, the infrequency with which customers switch vendors, and the ability of remaining incumbents to react to an entrant's prices before sufficient business is obtained at the post-merger price, new entrants are unlikely to obtain sufficient revenues to cover their costs of entering on the required scale. Because of this prospect, even firms in related businesses will not be interested in entering this market. Moreover, given the mission-critical nature of the applications recovered and the potentially ruinous consequences of a failed recovery, customers view reputation and experience in recovering clients as a major factor, and many would be unlikely to contract with a new entrant until it has established a successful track record over some meaningful time period as a shared hotsite service provider.

29. There are a few firms that provide shared hotsite services to niche segments of the market. They serve either a narrow type of customer or provide recovery services for a limited subset of computer equipment. Because such firms are likely to face substantially the same

barriers experienced by new entrants, there is little prospect that expansion by these firms, individually or collectively, would be sufficient to prevent the anticompetitive consequences one would otherwise anticipate resulting from this acquisition.

IV.

VIOLATION ALLEGED

30. Unless restrained, SunGard's proposed acquisition of Comdisco's Availability Solutions is likely to lessen competition substantially in North America in the market for shared hotsite services for large scale enterprise computer processing centers in the following ways:

a. Actual and direct price and service competition between SunGard and Comdisco will be eliminated; and

b. Competition in the market for shared hotsite services for large scale enterprise computer processing centers is likely to be substantially lessened.

SunGard's proposed acquisition of the Availability Solutions business of Comdisco, therefore, may tend substantially to lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

V.

REQUEST FOR RELIEF

The United States requests (a) adjudication that SunGard's proposed acquisition of the Availability Solutions business of Comdisco would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, (b) preliminary and permanent injunctive relief preventing consummation of the proposed acquisition, and (c) such other relief as the Court deems just and proper.

DATED: October 22, 2001

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing redacted Complaint was served upon counsel for defendants as follows:

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alleges as follows:

1. Large business, governmental, and educational organizations have been and are increasingly dependent on computerized data processing systems and sophisticated communications infrastructure to conduct mission-critical activities. These entities use these computer systems to perform core business functions, such as processing and storing transaction information, maintaining customer accounts, controlling production resources, inventory and shipping, and maintaining financial and administrative records. Because of the vital role performed by their computer systems, many such firms require "disaster recovery" capabilities that can restore these critical systems at an alternate location if a natural disaster, major power outage, or some other event destroys or makes their primary data centers inaccessible or unusable. A viable and effective disaster recovery plan is essential for these organizations to reduce the adverse and potentially devastating impact on their business of a disaster that destroys all or part of any of their primary data centers. Recent events have underscored the types of risks that are present, and the importance of effective disaster recovery planning and implementation. Competition between companies to provide these services plays an important role in allowing firms to acquire effective and state-of-the-art disaster recovery services technology at the lowest possible prices.

2. One type of disaster recovery service used for mission-critical applications is shared "hotsite" services. Shared hotsites are vendor-built and maintained remote computer data centers that have the broad range of computer equipment and communications infrastructure demanded by clients to recover critical business applications lost in disasters and run critical data processing and communications activities until the systems are restored, rebuilt, or another

recovery solution is put into place. Vendors of shared hotsite services offer such services on a shared, subscription basis, to a number of customers who essentially jointly share the costs of supporting the hotsites. Shared hotsites typically are used to provide disaster recovery for mission-critical business applications within 16 to 96 hours.

3. SunGard and Comdisco are two of only three significant suppliers of shared hotsite services for recovery of applications that businesses run on the largest and most powerful data processing equipment, such as IBM mainframe computers or high-end server platforms ("large scale enterprise computer processing centers"). SunGard and Comdisco compete directly against each other, and the third major supplier, IBM, in terms of price and quality of shared hotsite services. For many customers, SunGard and Comdisco are the closest and best competitive alternatives.

4. Allowing SunGard to acquire Comdisco's disaster recovery planning and services ("Availability Solutions") business is likely substantially to lessen price and service quality competition in the sale of shared hotsite disaster recovery services for large scale enterprise computer processing centers, and thus would violate Section 7 of the Clayton Act.

I.

JURISDICTION AND VENUE

5. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain defendants' violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

6. SunGard is a Delaware corporation with its principal place of business in Wayne,

Pennsylvania. SunGard transacts business in the District of Columbia.

7. Comdisco is a Delaware corporation with its principal place of business in Rosemont, Illinois. Comdisco transacts business in the District of Columbia.

8. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the defendants pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

THE DEFENDANTS

9. SunGard is a major supplier of information technology solutions for the financial industry, including investment support systems, trade processing, risk and asset management, funds transfer, and a variety of other types of financial information technology products and services, as well as being a major supplier of disaster recovery services. SunGard had year 2000 revenues in excess of $1.6 billion, with more than 10,000 clients in over 50 countries. Its disaster recovery services business is almost entirely located in North America and generated year 2000 revenues of **$[REDACTED TEXT]** million. SunGard is one of only three major firms that provide shared hotsite disaster recovery services in North America to clients with large scale enterprise computer processing centers. Its year 2000 revenues for all shared hotsite services were approximately **$[REDACTED TEXT]**million.

10. Comdisco is a substantial provider of computer and other electronics equipment leasing and computer services, as well as a major supplier of disaster recovery services. Comdisco had FY 2000 revenues of nearly $3.9 billion, including approximately **$[REDACTED TEXT]**million for its worldwide disaster recovery services. Comdisco is also a major provider

of hotsite disaster recovery services in North America to clients with large scale enterprise computer processing centers. It had North American revenues of approximately **$[REDACTED TEXT]**million in year 2000 for all shared hotsite services.

11. On July 15, 2001, Hewlett-Packard Company entered into an acquisition agreement for substantially all of Comdisco's Availability Solutions business for approximately $610 million in cash. On July 16, 2001, Comdisco filed a voluntary Chapter 11 bankruptcy petition with the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division (Case No. 01-24795). By Order of the bankruptcy court dated August 9, 2001, the assets comprising substantially all of Comdisco's Availability Solutions business were set to be sold pursuant to an auction held on October 11, 2001, with the Hewlett-Packard agreement constituting the auction floor.

12. **[REDACTED TEXT]**

SunGard's acquisition proposal will be presented to the bankruptcy court for approval at the Sale Hearing scheduled by the Order for October 23, 2001. Unless SunGard is enjoined from consummating the acquisition, it plans to close the transaction immediately after it is approved by the bankruptcy court as the successful bidder.

III.

IMPACT OF THE PROPOSED ACQUISITION ON TRADE AND COMMERCE

A. Disaster Recovery Services

13. Disaster recovery services encompass a range of services that can be used by firms to restore their computer processing and communications functions in case of an interruption in service due to a natural disaster, fire, terrorist act, or other cause. Business applications vary in

the degree to which they are "mission-critical" to the firm, and firms assign a different "recovery time objective" ("RTO") to each application. The RTO reflects the time a firm can tolerate an outage of that application. A different "recovery point objective" ("RPO") reflects the time between the last data backup and the time of the disaster, which is the factor that determines the amount of potential data loss. Some applications are so critical that in order to avoid considerable financial harm to the firm, they must be recovered instantly or within a few hours. Others may be restored within a few days. While some may have RTOs of a week or more. Users of disaster recovery services often employ a mix of disaster recovery services to meet the varying degrees of criticality and RTOs for the range of their applications.

14. Shared hotsites are fully operational alternate facilities that have vendor-installed computer systems, communications structures, and other resources necessary for a client to recover designated business applications in case its own data center becomes inoperative or inaccessible. Hotsites maintain specific equipment configurations to match the client's computer operations so that the client can replicate its data center operations with respect to the recovered applications. Clients generally select a hotsite some distance from the data center to be recovered, in order to be able to recover effectively in the event of a regional disaster. If a client's primary hotsite is occupied, clients can use an alternate hotsite owned by the vendor. In case of a disaster, a traditional hotsite client will transport its backup tapes from a secure location, generally remote from its data center, to a hotsite and will load the software and transfer the tape data onto the hotsite's storage systems. The client, with the assistance of the skilled hotsite personnel, can resume the disrupted data applications for a period of generally up to six weeks while the client's data center is restored or replaced. Hotsites generally are used for

critical applications with RTOs of 16 to 96 hours. Many, if not most, large firms and organizations with computer systems that use large scale enterprise computer processing centers have a significant number of applications with RTOs of 16 to 96 hours.

15. Shared hotsites are operated on a shared or subscription basis in which the facility's computer systems and costs are spread across many clients who have the right to conduct recovery operations at the hotsite. This sharing arrangement works because only a few clients will need to conduct recovery operations simultaneously. Consequently, each client bears only a fraction of the cost of maintaining the computer systems that would be necessary to replicate its data center at the time of a disaster. When the hotsite is not being used to recover a client, it is used for rehearsal and testing of recovery plans by customers of the shared hotsite facility. Because effective testing is critical to effective disaster recovery and numerous customers contend to schedule tests, testing time availability is considered by many customers to be a component of service quality.

16. In addition to hotsites, there are other types of disaster recovery services. These include "quick-ship" services, "coldsites," "work area recovery," "mobile hotsite recovery," and dedicated or "high availability" processing recovery. Clients can also establish their own internal disaster recovery solutions. These services have very different cost levels, RTOs, and other capabilities than shared hotsite services, and firms frequently purchase different services for applications with different levels of criticality to implement an overall disaster recovery plan that most economically satisfies the RTOs and other requirements of their business.

17. Quick-ship service vendors agree to ship specific types of equipment within a specified time to a designated location, where the client will then rebuild its data center

operation. This service is generally used for clients with smaller computer servers and systems, such as Windows NT servers, or for a small number of larger servers. Although personal computers, small servers or a limited number of midrange servers can be shipped and installed in two or three days, a much longer period is required to ship and install larger and more complex systems, such as mainframe computers, or a large number of midrange servers, such as UNIX servers. For these larger systems, quick ship recovery would consume one week or longer. In addition, customers who purchase this method of recovery cannot test this disaster recovery service.

18. Coldsites are essentially empty buildings with raised flooring and temperature control suitable for a data center, and varying levels of built-in communications connectivity. Coldsites are generally provided on a shared subscription basis, often as a complement to a contract for shared hotsite services. Clients must supply the equipment and resources to duplicate their necessary data center operations. Because it may take weeks to prepare a coldsite for a specific customer, coldsites are frequently used as a replacement data center at the expiration of hotsite service availability, which is generally six weeks.

19. Work area recovery involves a mobile or fixed-location facility which has employee workstations configured with desktop computers and local area networks and servers to enable groups of employees to continue basic business operations, such as customer service or telephone sales. Mobile hotsite recovery generally involves bringing one or more trailers configured for use as small data centers and quick shipment of specified computer equipment for installation in the mobile facility. This service is generally used for smaller data center requirements and cannot be used by large firms as a substitute for their shared hotsite disaster recovery services.

20. Dedicated processing services, whether purchased by contract or provided internally by a firm for itself, employ computer equipment that is dedicated to, and used only by, that one firm. Depending on the service, this can enable recovery of business applications virtually immediately to within fewer than eight hours. Dedicated services are much more expensive than shared recovery solutions because a single firm is paying the full cost of any dedicated equipment or facilities. Such services generally are used only for recovery of applications and data that the firm cannot afford to have unavailable for even as much as eight to twelve hours because the business would sustain unacceptable losses. Those who adopt internal solutions tend to do so because the benefits of quicker recovery exceed the much higher cost relative to the shared hotsite alternative.

21. Dedicated services substitute dedicated electronic disk backup of data for the use of computer tape ("dedicated storage systems") and may also include dedicated processing equipment ("dedicated processing"). Dedicated storage systems minimize the loss of data but by themselves are a substitute only for tape backup systems, not for the processing and communications functions of shared hotsite services. Dedicated storage systems can be combined with shared hotsite processing services to provide for recovery times that are faster than a hotsite using traditional tape backup services.

B. Relevant Markets

22. Shared hotsite services are generally purchased by organizations with substantial data processing requirements. These customers tend to use mainframe computers (now often referred to as enterprise servers) and/or high-end server platforms to process critical business applications that have a RTO of roughly 16 to 96 hours. The types of equipment, systems