

FEDERAL TRADE COMMISSION DECISIONS
Findings, Opinions and Orders

IN THE MATTER OF
RETAIL CREDIT COMPANY

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 8920. Complaint, March 9, 1978 — Final Order, July 7, 1978

This order, among other things, requires an Atlanta, Ga. collector and seller of consumer credit information to divest itself completely, within one year, of the Credit Bureau of Salem, Oregon (CB West Coast), and The Credit Bureau of Washington, D.C., subject to Commission approval; and provide purchaser, for three years, with copies of its current files in a form that will permit acquirer to prepare and sell credit reports. The order additionally bars the firm, for ten years, from entering into management contracts with divested corporations, and from acquiring, without prior Commission sanction, any concern engaged in the business of collecting and reporting consumer credit information.

Appearances

For the Commission: *William M. Sexton, David J. Hill, Philip B. Beardsley, Harold E. Kirtz and Brian L. Dillard.*

For the respondent: *J. Wallace Adair, Francis A. O'Brien and Kenneth E. Krosin, Howrey & Simon, Washington, D.C. and Kent E. Mast, Hansel, Post, Branden & Dorsey, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission has reason to believe that Retail Credit Company has made certain acquisitions, as hereinafter described, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45). Accordingly, the Commission hereby issues its complaint, stating its charges with respect thereto as follows:

DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint the following definitions apply:

a) "credit reporting agency" - a firm engaged in gathering, recording and disseminating information relative to the credit

worthiness, financial responsibility, and paying habits of consumers, firms, corporations, and any other legal entity being considered for credit extension.

b) "credit grantor" - a firm that extends credit to its customers in carrying on its business.

c) "credit investigative agency" - a firm primarily engaged in gathering, recording and disseminating information relative to the character, financial responsibility and/or insurability of consumers, firms, corporations, and any [2] other legal entity being considered as an applicant for life, health, casualty or other insurance, or for a loan by a lending institution.

d) "personnel reporting agency" - a firm engaged in gathering, recording, and disseminating information relative to the character and financial responsibility of consumers for use by employers in determining job applicants' employability.

RESPONDENT

PAR. 2. Respondent, Retail Credit Company (Retail Credit), is a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business located at 1600 Peachtree St., N.W., Atlanta, Georgia.

PAR. 3. Retail Credit and its wholly-owned subsidiaries, Retailers Commercial Agency, Inc. (Retailers), the Credit Bureau, Incorporated, of Georgia, the Credit Bureau, Incorporated, of Salem, Oregon and Credit Marketing Services, Inc., are engaged in the business of securing and storing information about consumers and selling such information to business concerns to assist them in making business decisions. Within this broad service market, Retail Credit (1) is engaged in the sale to insurance companies of reports about consumers for use in determining insurability and rate classification (insurance reporting); (2) prepares and sells personnel reports; (3) prepares and sells credit reports both locally and in the non-local credit reporting market; and (4) provides credit card recovery, insurance claims reports, market research, and other miscellaneous services for business customers. The company and its subsidiaries have compiled files on 72.3 million people consisting of previous reports, newspaper clippings, and available public records. Retail Credit's offices are located nationwide and can provide information on 98 percent of the population of the United States. Information contained in the parent company's files (on 48 million people) is available to its subsidiaries upon request.

PAR. 4. Revenues of Retail Credit in 1970 totalled \$183 million, resulting in income before taxes of \$18.2 million. Assets totalled \$60

million as of the end of calendar year 1970. The company ranks first in sales of life and health insurance [3] reports, first in sales of fire and casualty reports, second in sales of credit reports in the non-local credit reporting submarket, and is a leading factor in the personnel reporting submarket. Retail Credit has three times as many credit bureaus located nationwide as any competitor. The company has a dominant position in the sale of credit reports in the following, among other, standard metropolitan statistical areas (SMSA's): Washington, D.C.; San Francisco Bay area; Portland, Oregon; Atlanta, Georgia; and Miami, Florida.

PAR. 5. In 1970, insurance reporting accounted for 62 percent of Retail Credit's total revenues. Personnel reporting accounted for 8 percent, credit and commercial reporting 18 percent, and claims services 11 percent. The company's retained earnings increased from \$17 million in January 1965, to \$31 million at the end of calendar 1970.

PAR. 6. Retail Credit has acquired 91 credit bureaus since 1960. Seventy-eight of these acquisitions have been made since 1966. The company now owns 114 credit bureaus in the United States, the total having doubled since the end of calendar 1967.

PAR. 7. At all times relevant herein, Retail Credit sold and shipped products and provided its services in interstate commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

TRADE AND COMMERCE

PAR. 8. The relevant service market for purposes of this proceeding is the gathering and reporting of information on individuals to businesses for insurance, claim, credit, employment, and marketing purposes. Within this broad market exist a number of submarkets, including the following:

a) *Local Credit Reporting* - the furnishing of credit information on local residents by consumer credit reporting agencies to local credit grantors for use in determining whether to extend credit to consumer applicants.

b) *Non-Local Credit Reporting* - the furnishing of credit information on local residents by consumer credit reporting agencies to credit grantors located outside the local metropolitan area, or on non-local residents to credit grantors located within the local metropolitan area, for use in determining whether to extend credit to consumer applicants. [4]

c) *Life and Health Insurance Reporting* - the furnishing of life and health insurance reports by credit investigative agencies for

insurance companies' use in determining insurability and rate classification.

d) *Fire and Casualty Insurance Reporting* - the furnishing of fire and casualty insurance reports by credit investigative agencies for insurance companies' use in determining insurability and rate classification.

e) *Personnel Reporting* - the furnishing of personnel reports by credit reporting agencies and credit investigative agencies to employers to determine job applicants' employability.

PAR. 9. The submarkets described in Paragraph 8, above, are the relevant markets in which to measure anticompetitive effects resulting from the challenged acquisitions. The structures of these submarkets are as follows:

a) *Local Credit Reporting Submarket* - the number of competitors and degree of concentration vary from one metropolitan area to another. Normally only a few significant credit bureaus exist in a major metropolitan area, although fringe competitors may exist on the edge of the market. Nationwide, Retail Credit and its subsidiaries in 1970 accounted for about 10 percent of the market's estimated \$80 to \$90 million volume, an increase from approximately 3.5 percent in 1965. Although local credit reporting figures on a nationwide basis presently show an unconcentrated industry, the increase in overall national concentration since 1966 is substantial. This trend has been hastened by widespread acquisitions throughout the country since 1965.

b) *Non-Local Credit Reporting Submarket* - this market is highly concentrated with the leading firm having approximately 32 percent of the 1970 industry volume of \$40 to \$45 million. This firm acts as a sales agent for a nationwide system of credit bureaus. Retail Credit ranks second in the market with approximately 15 percent. [5]

The leading four firms have approximately 58 percent of total volume. Brokerage operations, direct sales by independent bureaus and interbureau coupon sales account for the remainder of the market.

c) *Life and Health Insurance Reporting Submarket* - Retail Credit has maintained a market share of over 80 percent of this submarket for a number of years. The challenged acquisitions did not increase Retail Credit's market share. The three leading firms accounted for 90 to 95 percent of 1970 industry volume of \$55 to \$60 million, with the remaining few percent held by various small reporting agencies.

d) *Fire and Casualty Insurance Reporting Submarket* - Retail Credit's market share of approximately 50-60 percent of this highly

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concentrated submarket was not increased by the challenged acquisitions. The leading three firms had an estimated 60 to 70 percent of 1970 industry volume estimated at \$120 to \$130 million. The remainder of the market was accounted for by smaller companies operating on a local or regional basis.

e) *Personnel Reporting Submarket* - Retail Credit is a leading factor among those companies offering personnel reporting service to local, regional and national customers. 1970 volume in this submarket is estimated at between \$25 and \$35 million. Most credit bureaus offer personnel reporting as part of their services. The challenged acquisitions marginally increased Retail Credit's market share.

ACQUISITIONS BEING CHALLENGED

PAR. 10. The Credit Bureau, Inc. (CB West Coast), an Oregon corporation, was acquired in January 1970. This chain included major credit bureaus located in San Francisco, San Jose and Oakland, California; Portland, Salem and Eugene, Oregon; Everett and Tacoma, Washington; Boise, Idaho; plus other credit bureaus located in California, Oregon, Washington, and Idaho, for a total of 43 bureaus. In the San Francisco Bay area, CB West Coast-owned credit bureaus accounted for [6] 50 to 60 percent of total credit reporting revenue, while 12 small bureaus, Credit Data Corporation and smaller credit reporting agencies divided the remainder of the market. In January 1971, Retail Credit acquired another credit bureau in the Bay area. In Portland, the CB West Coast bureau accounted for approximately 22 percent of total credit reporting revenue and had only one significant competitor. In the remaining above-listed metropolitan areas, CB West Coast operated credit bureaus that had a dominant or monopolistic position. CB West Coast credit reporting revenues for 1969 totalled \$4.2 million. Prior to the merger, Retail Credit operated offices or suboffices in all major metropolitan areas on the Pacific Coast. The company operated Retailers offices in Tacoma and Seattle, Washington; San Jose, San Francisco, Sacramento, and Oakland, California; and Portland, Oregon.

PAR. 11. The Credit Bureau, Inc. (CB D.C.), a District of Columbia corporation, was purchased on October 29, 1970, for \$3 million. CB D.C. had merged with its major competitor, Stone's Mercantile Agency (Stone), in December 1969. CB D.C. and Stone together accounted for at least 75 to 80 percent of total credit reporting revenue in the Washington SMSA in 1969, and were the only two significant firms primarily engaged in consumer credit reporting for local business enterprises. At the time of the acquisition Retail

Credit owned credit bureaus located in Annapolis and Hagerstown, Maryland, and operated Retail Credit offices in Alexandria, Virginia, and Silver Spring and Suitland, Maryland, and operated a Retailers office in Washington, D.C.

PAR. 12. The Retail Credit Association of Portland, Oregon, Inc. (CB Portland), an Oregon corporation, was acquired by Retail Credit on January 2, 1971. CB Portland was, at the time of the acquisition, the largest credit bureau in the State and the only significant local firm primarily engaged in consumer credit reporting in competition with Credit Bureau Metro of Portland, which was part of the CB West Coast chain acquired by Retail Credit in January 1970.

PAR. 13. CB West Coast, CB D.C., and CB Portland each were engaged in the sale of credit reports in the local and non-local markets prior to the acquisitions. Because of their location in major regional centers, the acquired companies are potential members of any competitive national system challenging Retail Credit's dominance in insurance reporting, even though the companies could provide only local competition in insurance reporting as independent factors. Each of the acquired companies engaged in personnel reporting prior to the acquisition. [7]

PAR. 14. At all times relevant herein, CB West Coast, CB D.C., and CB Portland each sold and shipped products and provided its services in interstate commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

EFFECTS OF ACQUISITION

PAR. 15. The effect of the acquisitions of CB West Coast, CB D.C., and CB Portland, and each of them, may be to substantially lessen competition or to tend to create a monopoly in the relevant market, which is the gathering and reporting of information on consumers to businesses for insurance, claim, credit, employment, and marketing purposes, or submarkets thereof, in the United States as a whole or in various sections thereof, in the following ways, among others:

a) in Portland, Oregon, Washington, D.C., the San Francisco Bay area, and in various metropolitan areas in the Pacific Northwest, the acquisitions:

(i) eliminated Retail Credit offices located in these areas as potential competitors in the local credit reporting markets;

(ii) eliminated the acquired credit bureaus as actual competitors in the non-local credit reporting market of Retail Credit offices located in these areas;

(iii) eliminated the acquired credit bureaus as actual competitors

in the local and non-local credit reporting markets of Retailers offices located in these areas.

b) in the non-local credit reporting submarket, the acquisitions have increased concentration in an already highly concentrated market; [8]

c) the substitution of Retail Credit for the previously independent bureaus may raise barriers to entry in the local and non-local credit reporting markets;

d) the potential withdrawal by Retail Credit of the acquired bureaus from existing non-local credit reporting systems would lessen effective competition in the non-local market;

e) in the personnel reporting submarket, the acquisitions have increased concentration and eliminated actual competition;

f) in the insurance reporting submarkets, the acquisitions eliminate the potential competition of the acquired bureaus as a part of competitive reporting systems and as independent factors;

g) the combination of Retail Credit, Retailers, and the acquired credit bureaus gives Retail Credit strong competitive advantages vis-a-vis its insurance reporting competitors by adding to the company's reporting resources in the acquired credit bureaus' metropolitan areas, thereby increasing the barriers to entry into insurance reporting;

h) further mergers and acquisitions in the industry may be encouraged.

VIOLATIONS

PAR. 16. The acquisition of CB West Coast, CB D.C., and CB Portland, separately and as a series, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18), as amended, and a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as amended.

INITIAL DECISION BY MONTGOMERY K. HYUN, ADMINISTRATIVE
LAW JUDGE

FEBRUARY 10, 1976

PRELIMINARY STATEMENT

On March 9, 1973, the Federal Trade Commission ("Commission") issued the complaint herein, charging respondent Retail Credit Company ("Retail Credit" or "RCC") with violations of Section 7 of the Clayton Act, as amended. (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended. (15 U.S.C. 45), by [2]

reason of respondent's January 1970 acquisition of Credit Bureaus, Inc. ("CB West Coast"), of Salem, Oregon, its October 1970 acquisition of The Credit Bureau, Inc. ("CBDC"), of Washington, D.C., and its January 1971 acquisition of The Retail Credit Association of Portland, Oregon, Inc. ("CB Portland"), of Portland, Oregon. The complaint alleged generally that the effect of these acquisitions may be to lessen competition substantially or to tend to create a monopoly in the relevant market, namely, "the gathering and reporting of information on consumers to businesses for insurance, claim, credit, employment, and marketing purposes," or submarkets thereof, in the United States as a whole or in various sections thereof.

More specifically, the complaint alleged that (Paragraph 15 of the complaint):

a) in Portland, Oregon, Washington, D.C., the San Francisco Bay area, and in various metropolitan areas in the Pacific Northwest, the acquisitions:

(i) eliminated Retail Credit offices located in these areas as potential competitors in the local credit reporting markets;

(ii) eliminated the acquired credit bureaus as actual competitors of Retail Credit offices in the non-local credit reporting market;

(iii) eliminated the acquired credit bureaus as actual competitors of Retailers' offices in the local and non-local credit reporting markets;

b) in the non-local credit reporting submarket, the acquisition increased concentration in an already highly concentrated market;

c) the substitution of Retail Credit for the previously independent credit bureaus may raise barriers to entry in the local and non-local credit reporting markets; [3]

d) the potential withdrawal by Retail Credit of the acquired credit bureaus from existing non-local credit reporting systems would lessen competition in the non-local market;

e) in the personnel reporting submarket, the acquisitions have increased concentration and eliminated actual competition;

f) in the insurance reporting submarkets, the acquisitions eliminate the potential competition of the acquired credit bureaus as a part of competitive reporting system and as independent factors;

g) the combination of Retail Credit, Retailers Commercial Agency ("R C A") and the acquired credit bureaus gives respondent strong competitive advantage over its insurance reporting competitors by adding to its reporting resources in the acquired credit bureaus' market areas, thereby increasing the barriers to entry into insurance reporting; and

h) further mergers and acquisitions in the industry may be encouraged.

On May 18, 1973, respondent duly filed its answer admitting certain allegations but denying the bulk of the complaint allegations and further asserting that CB West Coast was a failing company at the time of its acquisition by respondent.

Prehearing conferences were held in June and August 1973 and February and March 1974. The case was reassigned to me on January 7, 1974. In response to my direction to define more specifically the geographic areas in which anticompetitive effects have taken place with respect to the various product markets alleged in the complaint, complaint counsel specified the following markets:

1. Local credit reporting —

(a) Washington, D.C., consisting of Washington, D.C.; Charles, Montgomery, Prince George's Counties, Maryland, the cities of Alexandria, [4] Fairfax and Falls Church, Virginia; Arlington, Fairfax, Loudoun and Prince William Counties, Virginia.

(b) Portland, Oregon, consisting of Clackamas, Multnomah and Washington Counties, Oregon; and Clark County, Washington.

(c) Salem, Oregon, consisting of Marion and Polk Counties, Oregon.

(d) Eugene, Oregon, consisting of Lane County, Oregon.

(e) Tacoma, Washington, consisting of Pierce County, Washington.

(f) Boise, Idaho, consisting of Ada County, Idaho.

(g) San Francisco Bay area, consisting of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties, California.

2. Non-local credit reporting—the nation as a whole.

3. Life and health insurance reporting—the nation as a whole.

4. Fire and casualty insurance reporting—the nation as a whole.

5. Personnel reporting—the same as in 1 above and also the nation as a whole.

(See Response To The Administrative Law Judge's Directive To Define Geographic Areas In Which Anticompetitive Effects Have Taken Place, March 15, 1974; complaint counsel's Trial Brief, April 15, 1974)

Evidentiary hearings for complaint counsel's case-in-chief began on May 6, 1974 and continued, with interruptions for the convenience of counsel and witnesses, until October 3, 1974. Defense hearings began on October 3, 1974 [5] and continued, with interruptions for the convenience of witnesses and counsel, until May 27, 1975. Rebuttal hearings began on June 18, 1975 and

continued, with interruptions, until June 30, 1975. The record was closed on July 21, 1975 after receiving into evidence certain documents recently obtained by respondent under the Freedom of Information Act. Thirty-six witnesses were called by complaint counsel in support of the case-in-chief, and forty-seven by respondent in its defense. Complaint counsel called three witnesses in rebuttal. The transcript exceeds 15,000 pages, and some 550 exhibits were received in evidence. The parties filed proposed findings of fact and conclusions of law on September 10, 1975 and reply briefs on September 30, 1975.

This case is before me upon the complaint, answer, testimony and other documentary evidence, proposed findings of fact and conclusions of law and briefs filed by the parties. These submissions have been given careful consideration and, to the extent not adopted herein in the form proposed or in substance, are rejected as not supported by the record or as immaterial. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this initial decision, are denied.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings of fact and conclusions of law submitted by the parties, the administrative law judge makes the findings and conclusions set forth below.¹ [6]

¹ References to the record and other material are given in parentheses, and the following abbreviations are used:

- F - Findings of this initial decision.
- CPF - Complaint counsel's proposed findings, followed by the number of the proposed finding referred to.
- CRB - Complaint counsel's reply brief, followed by the page numbers.
- RPF - Respondent's proposed findings, followed by the number of the proposed finding referred to.
- RRB - Respondent's reply brief, followed by the page number.
- CX - Complaint counsel's exhibits.
- RX - Respondent's exhibits.
- JX - The joint exhibit, followed by the page numbers.

The following abbreviations are used throughout the findings:

Retail Credit Company	Retail Credit or RCC
The Credit Bureau, Inc. of Georgia	CBI
Retailers Commercial Agency, Inc.	RCA
Credit Marketing Services, Inc.	CMS
Credit Bureaus, Inc. of Salem, Oregon	CB West Coast
The Credit Bureau, Inc. of Washington, D.C.	CBDC
Retail Credit Association of Portland, Oregon, Inc.	CB Portland
Associated Credit Bureaus, Inc.	ACB
Credit Bureau Reports, Inc.	CBR
Credit Services International, Inc.	CSI
Credit Data Corporation	CDC
The Credit Data Division of TRW, Inc.	TRW Credit Data
Trans Union Systems Corporation	Trans Union
Associated Credit Services, Inc.	ACS

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Initial Decision

FINDINGS OF FACT

I. IDENTITY AND BUSINESS OF RESPONDENT RETAIL CREDIT COMPANY

A. Retail Credit Company

1. Retail Credit Company (hereinafter sometimes referred to as "respondent," "Retail Credit" or "RCC") is a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business located at 1600 Peachtree St., N.W., Atlanta, Georgia. (Complaint and Answer, par. 2) [7]

2. Respondent was incorporated in the State of Georgia on December 20, 1913, after beginning operations in Atlanta, Georgia, in 1899 as a credit bureau. (CX 47a; CX 354c)

3. Respondent, directly or indirectly through its subsidiaries, provides business firms throughout the United States with information on individuals for insurance, claims, credit, employment and marketing purposes. (CX 117a; CX 622b) In 1970, insurance reporting accounted for 62 percent of respondent's business volume, credit and other commercial reporting for 18 percent, claims reporting for 11 percent, and employment reporting for 8 percent. (CX 167c, h; CX 197f)

4. As of February 1971, Retail Credit and its subsidiaries operated approximately 1,700 offices and suboffices; 15,000 employees performed over 400 report services, with approximately half of those employees comprising the corps of trained information-gatherers. In its various offices, respondent maintained files on approximately 72 million consumers throughout the country. (CX 167 1; CX 177; CX 197d; CX 354a; CX 363z37a; CX 364n)

5. Respondent's revenues, income and assets in the years 1964-1971 were (in millions of dollars):

	1964	1965	1966	1967	1968	1969	1970	1971
Total revenue:	\$108.5	117.9	126.3	134.9	148.6	161.1	183.4	190.8
Net income before taxes:	\$ 13.6	15.2	15.5	16.2	17.5	19.1	19.0	19.1
Retained earnings:	\$ 17.4	20.7	23.9	26.7	29.0	31.9	30.8	34.4
Total assets:	\$ 34.2	38.2	42.2	47.1	50.5	52.2	60.3	65.0

(CX 51, pp. 10-11; CX 117e, f; CX 363z17, z18, z25, z25a, z33, z33a, z39a, z40)

6. At all times relevant herein, Retail Credit Company and each of the companies acquired by it, Credit Bureaus, Inc. of Salem, Oregon, The Credit Bureau, Inc. of Washington, D.C. [8] and the

Retail Credit Association of Portland, Oregon, Inc., were engaged in interstate commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. (Complaint and Answer, pars. 7, 14; Tr. 1506)

7. Retail Credit Company owns all of the stock of the following subsidiary companies:

Atwell, Vogel & Sterling, Inc.; The Credit Bureau, Inc. of Georgia; Credit Bureau of Montreal, Ltd.; Gay & Taylor, Inc.; Hunnicutt & Associates, Inc.; Physical Measurements, Inc.; Retail Credit Company of Canada Ltd.; Retailers Commercial Agency, Inc.
(CX 579m)

8. Respondent's RCC offices employ over 5000 full-time field representatives working in more than 1400 cities in the United States and Canada and maintain files on 48 million consumers. (CX 569e; CX 34a; CX 354d; CX 364n)

9. Respondent, through its RCC offices, is primarily engaged in providing a variety of services by which customers may obtain information upon consumers and others on the basis of which such customers may make business decisions for insurance and employment purposes. (Flory 10,044-045, 10,048-050, 10,112-114, 10,161-162; Burge 11,014, 11,071-072, 11,120; Rutherford 13,187-188) Many of RCC's customers are insurance companies, which utilize its services to obtain information for use in determining insurability, ratings or classifications for life, health, property, marine and automobile insurance purposes. (Nead 2875; Mitchem 3662; Bretherick 9357-58; Alley 9405; Flory 10,467-468, 10,100-101; Burge 11,069; CX 364k) RCC prepares written reports on the basis of investigation of the subject by its field representatives. (RX 249 through RX 256)

10. As part of the services provided to life and health and fire and casualty insurance companies, RCC operates a division for claims settlement and two companies called Physical Measurement, Inc. and Gay & Taylor. RCC's experienced claim investigators in nearly 300 cities investigate [9] and settle claims under life, health and fire and casualty policies. Physical Measurements is a chain of approximately 70 health history gathering centers and 73 branch offices located in major metropolitan areas which were established to speed the processing of life and health insurance applications. Gay & Taylor, an affiliate of RCC acquired in January 1970, is one of the largest multiple line insurance adjustment companies in the world. It provides services in the following areas: accident, health, life, automobile, aviation, casualty, fire, marine, fidelity, surety, mobile

homes, workmen's compensation, and catastrophes. During the two years following RCC's acquisition of Gay & Taylor, RCC purchased nine other claims adjusting companies in the States of Florida, Georgia, Virginia and Missouri and operated them as branch offices of Gay & Taylor. (CX 9, pp. 13, 30; CX 23, p. 29; CX 24, p. 18; CX 25z16-z19; CX 34; CX 44f; CX 51, pp. 6, 8; CX 79, pp. 2-3; CX 105; CX 167j, k; CX 354e; CX 363z38a; CX 569i)

11. Atwell, Vogel & Sterling performs audit inspection and loss control services, areas that are related to the insurance market. Such services are performed nationally and include inspection of building elevators for insurance purposes, safety and loss control programs, payroll audits, and inspections regarding fire, liability, burglary, and workmen's compensation, among other types of risks. (CX 25z8-z11; CX 74f; CX 354e; CX 167j)

12. RCC also provides employers with reports on prospective employees. Pre-employment investigations provide information concerning job history, employment experience, character, and skills of prospective employees so that businesses can select the best prospects for job openings. (CX 21e; CX 363z38a) The types of reports prepared and sold by RCC include the following: personnel selection reports; security personnel reports, when security or confidentiality is a factor; salesman selection reports; employment experience reports for clerical and industrial personnel; and reports concerning employees' progress. (CX 9, p. 33; CX 20; CX 21; CX 23, pp. 34-39; CX 25z-z2; CX 140; CX 354e)

13. RCC's credit reporting services fall within what it terms its "commercial" market, which consists principally of credit services and marketing information services. [10] (CX 23, p. 40) The credit services performed include the following: reports on individuals, farmers, and firms; character-financial reports; employment verification and trade reports; worth and income reports requested by mailorder houses, hospitals and medical clinics; individual, farmer and firm reports for use by petroleum product marketers; mortgage loan reports; tenant reports; prospective customer reports; skip and locate reports; slow payer reports; credit card pick-up service; and collection letters. (CX 9, pp. 34-36; CX 24, pp. 21-22; CX 25z3-z5; CX 30; CX 64; CX 75; Rutherford 13,333-336, 13,346, 13,490-493, 13,515)

14. RCC reporting volume in the United States for the years indicated is as follows:

RCC (parent company only)

	1965		1967		1969		1970(b)	
	No.	\$	No.	\$	No.	\$	No.	\$
Total Reports(a)	27,355	99,027	27,480	112,118	27,812	128,212	26,000	136,041
Personnel	1,434	10,195	1,658	13,165	1,644	14,611	1,393	12,817

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<i>Insurance</i>	23,945	74,275	23,773	81,505	24,523	92,510	(c)	
<i>Life & Health</i>	6,969	31,230	6,931	34,175	7,066	39,657	7,152	42,973
<i>Fire & Casualty</i>	17,094	43,046	16,891	47,330	17,511	52,850	(c)	
<i>Claims</i>	677	8,657	779	11,250	830	13,704	(c)	
<i>Bond</i>	56	186	48	197	44	205	(c)	
<i>Management Information</i>	88	1,229	98	1,397	81	1,483	(c)	
<i>Credit(d)</i>	1,028	4,485	1,038	4,587	1,109	5,698(e)	1,056	6,202

(a) The total figures are comprised of credit, personnel, and other reports.

(b) CX 43a is the source for 1970 figures; CX 47e, f, which has no figures for 1970, is the source for the 1965, 1967, and 1969 figures because the breakdown of the property category permits a reliable indication of the fire and casualty insurance reporting market. [11]

(c) CX 43a provides no adequate breakdown for these categories.

(d) The credit category includes mortgage reports.

(e) The 1969 and 1970 credit figures include \$1,105,400 and \$1,348,000, respectively, in credit card pick-up service revenue. (CX 43b) No indication has been made in the record regarding the amount of credit card pick-up service revenue in the 1965 and 1967 credit figures.

(CX 43a, b; CX 47e, f)

B. The Credit Bureau, Inc. of Georgia (CBI)

15. The Credit Bureau, Inc. of Georgia (hereinafter referred to as "CBI") is a corporation organized in the State of Georgia, with its principal place of business at 1600 Peachtree St., N.W., Atlanta, Georgia. It was incorporated on January 27, 1937. (CX 142a,h)

16. CBI's primary business is providing credit reports on consumers to credit grantors which need to evaluate the financial reputation and payment history of individuals in order to determine whether credit can safely be granted. CBI also produces personnel reports, which concern the subject's acceptability for employment. (CX 42a; CX 180, p. 28) In addition, it provides collection services and credit card promotions for credit grantors in the United States. Its credit grantor customers are primarily department stores, retailers, banks, and credit card companies. (White 11,693, 11,777-778)

17. CBI has grown substantially through acquisitions. It owned 22 credit bureaus at the end of 1959. Ninety-four acquisitions were made from 1960 through January 1971, with 81 of them made since the end of 1965. CBI owned 115 credit bureaus in the United States as of January 1971 in addition to 5 other bureaus in Canada. (CX 74a-d; CX 167f; CX 197f; CX 363z31a; see Appendix A for a listing of acquisitions)

18. CBI's credit bureau offices are located primarily in the

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southeastern United States, the New York-New Jersey metropolitan area, the Washington, D.C. area, the San Francisco Bay area, and the Pacific Northwest. (CX 135; CX 142h, i; CX 167f) [12]

19. CBI is presently organized into eight regional automated credit reporting centers, located in Albany, New York; Atlanta, Georgia; Miami, Florida; Orlando, Florida; New Shrewsbury, New Jersey; Portland, Oregon; Washington, D.C.; and San Jose, California. The remainder of its credit reporting offices are manual credit bureaus. (White 11,152-154, 11,156-157; RX 280)

20. Revenues of CBI from reporting services, not including dues and promotions, amounted to the following:

CBI of Georgia

	1965		1967		1969		1970*	
	No.	\$	No.	\$	No.	\$	No.	\$
Total	2,959	3,501	3,993	4,722	6,089	8,479	5,931	8,259
Credit	2,954	3,480	3,986	4,694	6,078	8,429	5,921	8,210
Personnel	5	21	7	28	10	50	10	49

* Does not include sales of the Credit Bureau, Inc. of Washington, D.C., or Credit Bureaus, Inc. of Salem, Oregon.

(CX 42a)

C. Retailers Commercial Agency (RCA)

21. Retailers Commercial Agency, Inc. (hereinafter referred to as "RCA") is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1600 Peachtree St., N.W., Atlanta, Georgia. It began business in New York City in January 1897, as a credit reporting agency. It was incorporated on July 13, 1934; in that same month, all the stock of RCA was purchased by RCC. (CX 123b; CX 142a, f)

22. RCA was acquired in order to supplant RCC in the credit reporting business and to find a less expensive way to produce better credit reports, primarily mortgage reports. (Rutherford 13,169-170, 13,487)

23. RCA operates well over 100 branch offices and sub-offices throughout the United States, including offices in Portland, Oregon; Sacramento, Oakland, San Jose, and San [13] Francisco, California; Seattle and Tacoma, Washington; and Washington, D.C. (CX 134z; CX 362e; CX 363z12; Complaint and Answer, par. 10)

24. RCA produces many types of reports, including character credit reports, mortgage reports, collection aid reports, employment and personnel reports, slow payer reports, tenant reports and income

reports. (RX 392; CX 310; Aitken 10,689-690, 10,723-724; Rutherford 12,953-956, 12,965-967, 13,005, 13,210-216, 13,632-636, 13,764-766) These reports produced by RCA are generally based on investigation of the subject, including interviews and reference checks. (Rutherford 3847-50, 13,134-135, 13,210-211)

25. RCC regards RCA as an operating unit of Retail Credit Company rather than an autonomous company. Retail Credit Company markets and sells most of the reports produced by RCA offices, but RCA does sell some credit reports to its own customers in particular local areas. (Rutherford 12,965, 13,050, 13,072-073)

26. According to officials of RCC and RCA, the primary business of RCA is the sale of investigative "character credit reported," primarily for mortgage loan purposes. (Aitken 10,692; Rutherford 13,134-135, 13,168, 13,027-028) These reports are narrative reports which emphasize the general character of the applicant (McGregor 5836, 5772; Laurens 1941, 1956), and contain more extensive information than the credit bureau report usually sold to a retail merchant. (Rutherford 13,056-057) They may contain file information secured from a credit bureau, or may have no trade information at all. (Laurens 1941; McGregor 5837, 5771-72; Griffeth 6841; Rutherford 13,027)

27. RCA will also provide special investigatory reports requested by its customers for specific purposes, at an hourly rate. (Rutherford 13,211-213)

28. RCA usually does not collect, or maintain files on, consumer pay habit information. (Devers 8356-57) Its reports are often derived from the information contained in a credit application, which is verified directly with sources, and from checks of public record information on file. (Laurens 1955; McGregor 5836-37; Rutherford 13,007, 13,414, 12,963, 13,367) The report would contain, in [14] addition to the identity and addresses of the applicant, information on residence of the applicant, type of job, length of time on the job, general character, and whether he owned his home or rented. (Rutherford 12,963)

29. RCA, however, regularly maintains files of the credit reports which it has made. The information contained in those reports can be used in the same manner as a credit bureau file, to provide prompt information without the need for a new investigation. (Aitken 10,889; Rutherford 13,151) RCA also keeps files of public record information, such as deaths, judgments and bankruptcies. (Laurens 1957; Rutherford 13,491) An RCC executive official testified that in 1969-1970 RCA would have file information on an individual

in only 5-15 percent of the cases in which information was sought. (Rutherford 13,008)

30. In general, RCA will prepare and sell a consumer credit report to a retail merchant on request, usually when a credit bureau report is unavailable or inadequate. Such a report is usually based on verification of the information contained in the credit application, checks with references and public record information, and sometimes a telephone interview with the applicant, and contains pay habit information. This type of credit report is more expensive than an in-file credit report. (Rutherford 13,007, 13,131, 13,367, 13,480-481, 13,719) In some areas RCC maintains "derogatory files" and markets them to local credit grantor customers, including retail merchants. (F. 32, 194, 208-09) And, in Los Angeles, California, RCA has regularly sold credit reports since May 1970. (F. 33)

31. In the 1960's some customers of RCA stopped using the so-called "character reports" prepared by RCA and began to rely more heavily on reports containing pay habit information of the kind produced by credit bureaus from file information. The primary reason for this development was that in-file reports are less expensive, and can be obtained much faster, than reports based on investigation. (McGregor 5770-73; Rutherford 12,965-966, 13,627-628) As a result, RCA offices in certain areas attempted, in the mid-1960's, to develop a file containing pay habit and trade information on consumers in those areas. (Rutherford 12,968) An attempt to establish a derogatory file in Portland, Oregon was eventually abandoned as a [15] failure (F. 194), while a simultaneous effort in Tacoma, Washington allowed RCA to become a substantial competitor of the local credit bureau. (F. 208-09) Merchants in Tacoma were still purchasing in-file trade information from RCA into the 1970's. (Loeb 1191-92)

32. In addition, in 1963 and 1964 the RCA office in Los Angeles, California attempted to build a credit bureau file containing essentially derogatory information. It obtained the cooperation of 15 collection agencies and copied legal information. The files from RCA offices in Long Beach, Santa Ana, Anaheim and San Bernadino, California were consolidated with those of the Los Angeles office. Credit grantors in the area were solicited for information about accounts which were being sent to collection agencies. According to an official of respondent, the RCA office did not attempt to get pay habit information from credit grantors, because it would have been unable to file all the information. The Los Angeles RCA office made sales of file information to credit grantors over a period of several years, but RCA ultimately decided that revenues were insufficient to

cover expenses, and gave up the effort to build and maintain the file in the Los Angeles area. (Rutherford 12,980-987, 13,354-355, 13,650)

33. In a second attempt to expand its file base in Los Angeles, RCA purchased the assets of the Credit Bureau of Greater Los Angeles in May 1970. That bureau was a specialized credit bureau which offered credit reports to finance companies, tire dealers, furniture stores, auto dealers, milk companies, and auto repair shops. Its files were combined with those of RCA's Los Angeles office. (Rutherford 12,996-998; CX 128) According to an official of respondent, no attempt was made to solicit credit information from other retail merchants in the Los Angeles area. (Rutherford 13,365) The same official of respondent also testified that, although the RCA office was not able to capture the share of the credit reporting market which was originally expected, the office has been consistently profitable. (Rutherford 12,998)

34. Also during the mid-1960's, RCA attempted, unsuccessfully, to induce retail merchants in Atlanta to purchase its reports. (Griffeth 6840-44) In San Francisco, however, the RCA office sold in-file and updated credit reports containing pay habit information in competition with a local credit bureau, primarily to mortgage lenders. (F. 143) [16]

35. RCA's estimated revenue from reports amounted to the following:

Retailers Commercial Agency

	1965		1967		1969		1970	
	No.	\$	No.	\$	No.	\$	No.	\$
Total*	1,703	4,725	1,292	4,195	1,412	4,315	1,311	4,290
Credit	1,645	4,528	1,257	3,720	1,210	3,542	998	3,279
Personnel	2	6	Unavailable		11	46	11	46

* The amounts for the categories listed do not provide the full amount of the total; the difference is comprised of circulation quality, firm, and other reports.

(CX 40a, b)

D. Credit Marketing Services, Inc. (CMS)

36. Credit Marketing Services, Inc. (hereinafter referred to as "CMS") was established in October 1970 as a wholly-owned subsidiary of CBI and began business about February 1971. (CX 188a; CX 197d; White 11,763-764)

37. CMS was designed as a marketing organization to provide services related to the extension and control of consumer credit for regional and national credit grantors. In so doing, CMS provided

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brokered credit reports and credit card promotional services to these customers. (CX 197d; CX 370; CX 367b, c; White 11,763-764)

38. In a suit brought by Credit Bureau Reports, Inc. (CBR), CMS was prohibited for a period of three years from going forward with any new marketing plan or new expansion program whereby RCC or any of its subsidiaries would act as reseller or sales agent in the life and health and fire and casualty insurance reporting and the non-local credit reporting markets for the sale of credit reports prepared from the credit data of non-RCC-owned credit bureaus to non-local credit grantors. RCC was also prohibited from withdrawing any credit bureaus owned by it or its affiliates from membership in CBR for three years (and thus prohibiting [17] exclusive use by RCC-owned credit bureaus of the brokerage facilities of CMS). Judgment was rendered on December 30, 1971 (*Credit Bureau Reports, Inc. v. Retail Credit Co.*, 358 F. Supp. 780 (S.D. Tex. 1971), *aff'd*, 476 F.2d 989 (5th Cir. 1973)).²

39. As of January 1, 1973, CMS discontinued all efforts to complete as a broker of credit reports to regional and national accounts. It remained in business solely to sell promotional services. (Rutherford 3827, 13,038-039, 13,320-321)

II. IDENTITY AND BUSINESS OF THE ACQUIRED FIRMS

A. Credit Bureaus, Inc. of Salem, Oregon (CB West Coast)

40. Credit Bureaus, Inc. of Salem, Oregon (hereinafter referred to as "CB West Coast"), originally organized as a sole proprietorship in 1933 by Francis W. Smith, was incorporated in the State of Oregon in 1940, with Mr. Smith as its sole stockholder. (CX 261m; CX 365a)

41. CB West Coast was engaged in the business of producing and selling credit reports and supplying debt collection and other credit services to credit grantors. (F. Smith 250, 254) It sold verbal and written in-file consumer credit reports, mortgage loan reports, trade clearance reports, and personnel reports to such customers as retail firms, banks, oil companies, and credit card firms. However, CB West Coast had only limited sales of mortgage loan reports and minimal sales of personnel reports in 1969. It did not sell insurance reports. CB West Coast also provided commercial credit reports, primarily on individual entrepreneurs and small firms. (F. Smith 254, 270-72, 338-39; CX 41a; CX 171e; CX 176e; CX 307; CX 364z44a, z45a) CB West Coast maintained over 8 million credit reporting files. (CX 119h) [18]

² Official notice was taken of this decision. See Tr. 3886-87.

42. By the time of its takeover by CBI in January 1970, CB West Coast owned and operated 43 credit bureaus in the States of California, Idaho, Oregon, and Washington, including San Francisco, which was the largest of the nation's computerized bureaus in 1970. (CX 197f) Some of these bureaus engaged only in collection activities. (Smith 251; CX 365a-e; CX 366d-e) Nearly all of CB West Coast's credit bureaus were members of Associated Credit Bureaus, Inc. (ACB), a national trade association of credit reporting agencies. (CX 365f)

43. Revenues from reports produced by CB West Coast amounted to the following figures:

<i>CB West Coast</i>								
	1965		1967		1969		1970	
	No.	\$	No.	\$	No.	\$	No.	\$
<i>Total</i>	837	1,867	2,450	2,960	3,239	4,355	2,495	4,041
<i>Credit</i>	837	1,867	2,450	2,958	3,238	4,353	2,497	4,037
<i>Personnel</i>	—	—	.2	1.7	.3	1.9	.6	4

(CX 41a, b; CX 47k, 1; CX 48c)

(1) Portland Operations

44. In 1968, CB West Coast opened an office on Halsey Street immediately outside the city limits of Portland, Oregon, after being located a short period of time within the Portland city limits. The Halsey Street office contained the credit files of the credit bureaus of Beaverton, Hillsboro, and Oregon City, Oregon, and Vancouver, Washington, which had been consolidated in 1967. Consumer credit reports from these consolidated files were sold in the four-county metropolitan Portland area, including Portland and the counties of Clackamas, Multnomah, and Washington in the State of Oregon and Clark in the State of Washington. (Smith 251, 274; Aitken 10,797-799; CX 80z35; CX 171h; CX 365b)

45. The four bureaus comprising the Halsey Street consolidated office held memberships in Associated Credit Bureaus (ACB), before and after the consolidation of files at Halsey Street. (Rutherford 13,584) [19]

46. The number of subscribers to the credit reporting services provided by the metropolitan Portland operations of CB West Coast increased from 595 in 1967 to 727 in 1969. These included banks, retail firms, finance companies, insurance companies, realtors, oil and national credit card companies, utilities, and medical organizations, among others. (CX 171e, i)

47. The Halsey Street office served as CB West Coast's test mode

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for the computerization of credit reporting. The Halsey Street office's computerization was accomplished and computerized credit reports were sold during the period of late 1968 or early 1969. (Aitken 10,846, 10,852; CX 80z34-z35)

48. Revenues from reports produced by the Halsey Street office accounted for the following figures:

	1967 (000)		1969 (000)		1970 (000)	
	No.	\$	No.	\$	No.	\$
Total	56	93	244	300	172	231
Credit	56	93	244	300	172	229
Personnel	0	0	.1	.4	.3	2

(CX 38w, x, z, z1, z2, z3; Tr. 182)

(2) San Francisco Bay Area Operations

49. During 1966 and 1967, CB West Coast acquired the Credit Bureau of San Francisco, Inc., the Credit Bureau of Santa Clara Valley, Inc. (San Jose), the Retailers Credit Association of San Francisco, and the Bureau of the Greater East Bay (Oakland). All of these corporations were merged into Credit Bureau Metro, Inc., of California during August 1967 (hereinafter referred to as "Credit Bureau Metro"). (CX 261f)

50. Prior to its acquisition by CB West Coast, the San Jose Credit Bureau (formally called the Credit Bureau of Santa Clara Valley) had begun efforts to computerize its operations. Those efforts were the forerunner of the ACROPAC system later perfected by CB West Coast and CBI. When the [20] San Jose Bureau was acquired, CB West Coast hired the man who had begun to develop a computerized credit reporting system and he continued his efforts under CB West Coast on what eventually became the ACROPAC system. (Rutherford 13,557)

51. The primary geographic area served by Credit Bureau Metro in 1969 included the five counties of San Francisco, San Mateo, Santa Clara, Alameda, and Marin. Francis Smith, former owner of CB West Coast, identified the area as extending from San Jose through Hayward, up through the town of Oakland, across the Bay, including San Francisco, and down the peninsula to San Jose, California. (Smith 264; CX 460; see also CX 176i)

52. Revenues from reports produced by Credit Bureau Metro were as follows:

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	1967		1969		1970	
	No.	\$	No.	\$	No.	\$
<i>Total</i>	1,583	1,837	1,711	2,308	1,508	2,445
<i>Credit</i>	1,583	1,835	1,711	2,307	1,508	2,444
<i>Personnel</i>	.2	2	.2	1	.2	1

(CX 38a; Tr. 182)

(3) Tacoma Area Operations

53. In 1969, the Credit Bureau of Tacoma (hereinafter referred to as "CB Tacoma") was a part of CB West Coast. (Smith 251) On January 2, 1970, RCC acquired CB Tacoma as one of the bureaus within the CB West Coast chain. (T. Smith 1037)

54. CB Tacoma sold credit reports to credit grantors in Tacoma and surrounding Pierce County, Washington and engaged in debt collection. It had about 425,000 credit reporting files in 1970. (F. Smith 1037, 1073; Geyer 448-49; CX 307f) CB Tacoma was a member of Associated Credit Bureaus, Inc. (CX 307g) [21]

55. For each of the calendar years 1967, 1969 and 1970, CB Tacoma's sales and revenues from credit reporting were as follows:

	1967		1969		1970	
	No.	\$	No.	\$	No.	\$
<i>Total</i>	168	281	299	360	212	334
<i>Credit</i>	168	281	299	360	212	334
<i>Personnel</i>	0	0	0	0	0	0

(CX 38z9; CX 307g)

(4) Other Pacific Northwest Operations

56. CB West Coast also owned a number of credit bureaus located in various cities and towns in Oregon, Idaho and Washington. These bureaus generally sold credit reports, without competition, in the area surrounding the town in which they were located. (F. Smith 251-55, 262-64)

(5) Acquisition by Respondent

57. In 1967 CB West Coast was in the process of developing a computerized credit reporting system. It found itself in need of additional capital, and began to investigate the possibility of securing a loan or being acquired by another company. It approached respondent for that purpose, and negotiations began in the fall of 1967. (CX 365i)

58. Representatives of RCC visited CB West Coast in September 1967 and reported to RCC on the development of CB West Coast's ACROPAC system. (CX 274; CX 611) RCC's director of data processing, who went to Salem, Oregon to investigate the automated

credit reporting system, reported favorably on it, and suggested that RCC consider purchasing it. (CX 274) It does not appear that any attempt was made simply to purchase the system. In November 1967 RCC decided that it had doubts about the profitability of the ACROPAC system, and did not desire to invest in a loan or acquisition on the West Coast at that time. (RX 3) [22]

59. On December 12, 1967 Donald Rutherford, then the president of respondent's affiliated companies, advised Francis Smith that RCC had decided to reopen discussions which "hopefully will lead to eventual merger of our interests," probably through a substantial loan to CB West Coast followed by a merger of the two firms. (CX 412) Those negotiations were undertaken on the condition that RCC could make full evaluation of the financial, data processing and managerial aspects of CB West Coast's business before a decision was made on whether RCC would invest in the firm. (CX 365i)

60. Senior executives of RCC visited CB West Coast in January 1968. They examined the company's competitive situation, marketing position, employee morale and customer usage. Rutherford explained to RCC's Advisory Committee for Acquisitions that if the result of the visit indicated that it was desirable for RCC to make a loan to CB West Coast with provision for later acquiring all its stock, a financial audit would be made of CB West Coast. (CX 613a) Such an audit was conducted by Arthur Andersen & Co. in 1968. (CX 261)

61. In July 1968 an agreement in principle was reached between RCC and CB West Coast for the acquisition of CB West Coast by RCC. It was agreed that CB West Coast would transfer all of its outstanding stock to RCC in exchange for 100,000 shares of RCC common stock. Included in the agreement was a loan in the amount of \$3,500,000 to be made by RCC to CB West Coast for working capital, payment of debts, and completion of the automation project. (CX 413) Smith approved the terms, but indicated that he would prefer an immediate sale of CB West Coast to RCC to an option to purchase at a later date. (CX 414)

62. The formal loan agreement between RCC and CB West Coast authorized loans to CB West Coast in the amount of \$3,500,000, to be secured by the pledge of all CB West Coast stock. As further consideration for the loan, RCC received an option to acquire the stock of CB West Coast in exchange for 100,000 shares of RCC common stock, exercisable on or before January 21, 1971. (RX 237; RX 240) The agreement also provided that RCC would have access to CB West Coast's electronic data processing system. (RX 237u; RX 240z9) It was understood that CB West Coast alone retained the right to sell the automated system, but that RCC could adopt and use it

without further payment even if the option was not exercised. (RX 241a) Included [23] in the option agreement was a 5-year covenant not to compete affecting all 11 stockholders of CB West Coast and prohibiting them from participating in the business of credit reporting and collection service in any county in the States of California, Idaho, Oregon, or Washington, in which CB West Coast was engaged in credit bureau or collection service operations. (RX 240z13; CX 44e)

63. The resolution of the RCC Board of Directors which approved the agreement termed it a "Plan of Reorganization for the acquisition of all the capital stock" of CB West Coast, and made no mention of the automated reporting system. (CX 417)

64. In 1969 additional loans to CB West Coast in the amount of \$375,000 and \$500,000 were authorized. The last of these loans was made on the condition that if RCC exercised the option, any unpaid balance of the loan would reduce the number of shares of RCC stock which would be given in exchange for CB West Coast stock. (RX 322a; RX 324a) As of December 31, 1969, \$4,275,000 was due to RCC under these arrangements. (CX 51, p. 14)

65. On December 16, 1969, an agreement and plan of reorganization among RCC, CB West Coast and CB West Coast's stockholders was entered into whereby CB West Coast's stock would be exchanged for 90,000 shares of RCC stock. The exchange was consummated on January 2, 1970. (RX 248; CX 197f)

66. The record does not support respondent's contention that its agreements with CB West Coast were motivated solely by a desire to obtain an automated credit reporting system for CBI. (RPF 56) Rather, the record supports the inference that the transaction was intended from its inception by both parties to culminate in an acquisition.

67. Rutherford estimated that CB West Coast's automated reporting system was worth \$250,000 in 1968. (Rutherford 13,433). Trans Union Systems Corporation declined Francis Smith's offer to sell the system in 1969 for \$500,000 because it thought it would be less expensive to develop its own automated system. (Devers 7443, 7473) However, RCC made loans to CB West Coast in excess of \$4 million and gave its stock valued at \$3.7 million in exchange for the stock of CB West Coast. (Briloff 15,455, 15,483) [24]

B. The Credit Bureau, Inc. of Washington, D.C. (CBDC)

68. Prior to its acquisition by RCC in October 1970, the Credit Bureau, Inc., of Washington, D.C. (hereinafter referred to as "CBDC"), was owned by approximately 25 shareholders. The four

principal shareholders were Woodward & Lothrop, Kann's Department Store, Lansburgh's Department Store, and the Hecht Company. The remaining stock was scattered among about 20 different companies and individuals. CBDC's subscribers numbered about 1000. (Waterbury 8365-66)

69. In October 1969, CBDC purchased Stone's Mercantile Agency ("Stone's"), its principal competitor in the sale of credit reports in the Washington, D.C. area, for \$1,000,000. (Waterbury 8365, 8367-68; CX 7h) Stone's was a privately owned business engaged in producing and selling consumer credit reports, mortgage reports, business reports and personnel reports. (Tracey 1998-2000, 2014; Fletcher 2247-49) CBDC and Stone's continued to be operated as separate companies after the purchase. (CX 81b)

70. CBDC sold verbal and written in-file and updated consumer credit reports (including mortgage reports), business reports, employment reports, and real estate reports. (CX 527) Less than one-half of 1 percent of its reporting revenue came from the sale of personnel reports and less than 5 percent from the sale of mortgage reports. It did not produce or sell insurance reports during either 1967 or 1969. (White 11,659j; CX 73-f) The bureau also operated a Welcome Newcomer service, a loan exchange for small loan companies, a 7-store member shopping plate, and a Merchants' Mutual Protection service. (CX 81b)

71. At the time of the acquisition, CBDC and Stone's served the Washington trade area, which covered the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. There were no suburban credit bureaus. (Tracey 2003; Fletcher 2249; Holden 9128; CX 7g; CX 33z111; CX 81b) [25]

72. In 1969, both CBDC and Stone's were members of Associated Credit Bureaus. (White 12,111)

73. Revenues from reports produced by CBDC were as follows:

	1965		1967		1969		1970	
	No.	\$	No.	\$	No.	\$	No.	\$
<i>Total</i>	1,309	1,318	1,446	1,446	1,980	2,167	1,407	1,729
<i>Credit</i>	1,306	1,305	1,435	1,422	1,978	2,158	1,405	1,719
<i>Personnel</i>	3	13	11	24	2	8	2	10

(CX 39c)

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74. Revenues from consumer reports produced by Stone's amounted to the following:³

	1965	1967	1969	1970
Total	\$1,070,000	1,181,000	1,188,000	1,134,000

(CX 39d)

75. In the late 1960's, CBDC established a Long Range Planning Committee to study the possibility of computerizing the credit bureau. As part of its initial activities, the Committee in 1968 had signed a tentative agreement, subject to cancellation, to purchase the Credipak automated credit reporting system software package then being developed by Associated Credit Bureaus, Inc. ("ACB"), the credit reporting industry's principal trade association. (Waterbury 8371-74, 8426-27, 8464; Holden 9099-9103, 9141-42; F. 126)

76. During 1969, the Committee studied various computer equipment proposals, and determined that it would cost at least \$1 million to automate the credit bureau. This cost did not include the cost of developing a qualified [26] technical staff or of renting new office space large enough to house a major computer complex. (Waterbury 8373-77, 8381-82; Holden 9101-03, 9104-10, 9166-67) By the end of that year, the Board of Directors of CBDC decided to abandon any further efforts to computerize the credit bureau on its own, and formed a committee to explore the possibility of selling the credit bureau. The Executive Committee passed a resolution in December 1969 withholding the purchase of Credipak. (Waterbury 8446-50; Holden 9109-14; RX 304a)

77. CBDC's Executive Committee, after reviewing several offers, decided to sell the bureau to RCC. Accordingly, on October 29, 1970, CBDC was purchased by RCC for \$3 million. Although the sale agreement did not contain any clause obligating RCC to computerize CBDC within any particular time frame, there was a "very definite understanding" on the part of the CBDC Board that CBI would automate the bureau, and it did so in February 1973. (Waterbury 8436; Holden 9169-73; White 11,578-579, 11585-586) RCC's subsidiary CBI became the owner of the bureau. (CX 7b)

C. Retail Credit Association of Portland, Oregon, Inc. (CB
Portland)

78. The Retail Credit Association of Portland, Oregon, Inc. ("CB Portland") was incorporated in January 1921, as a membership

³ Personnel reports could not be separately identified by Stone's.

corporation. In 1969, there were 973 member-stockholders, most of them Portland merchants, each of whom had an equal share in the ownership of the bureau. The member-stockholders represented practically all of the credit grantors in Portland and were the principal users of the credit bureau. (Huygens 5845-47; CX 170c-d)

79. CB Portland produced and sold various credit reports, including verbal and written in-file and updated reports and mortgage loan reports. It also sold personnel reports. About 3 percent of its revenues came from the sale of mortgage reports, and less than 1 percent from the sale of personnel reports. CB Portland did not produce or sell insurance reports. (CX 170b, g-h) [27]

80. CB Portland sold credit reports to banks, merchants and others operating within a four-county trade area-Washington, Multnomah and Clackamas Counties in Oregon and the southern part of Clark County in Washington. It maintained files on consumers residing in the same general area. (Laurens 1934, 1940; Winthrop 5613-18; Huygens 5862-63; CX 170i) As of the beginning of 1970, CB Portland maintained approximately one million credit files, none of which were computerized. (CX 170g) CB Portland was also a member of Associated Credit Bureaus, Inc. (Laurens 1944; CX 170b)

81. For each of the following calendar years, CB Portland's sales and revenues from credit reporting were as follows:

	1967		1969	
	No.	\$	No.	\$
Total	468	608	436	656
Credit	467	604	435	652
Personnel	1	4	1	4

(CX 170b)

82. Starting in 1966, the Board of Directors of CB Portland began to study various methods of computerizing the credit bureau, but by 1970 had concluded that it could not afford to automate the bureau, either by itself or on a cooperative basis with other independent credit bureaus, and that it lacked the managerial capability to operate an automated credit bureau. (Winthrop 5627-28; Huygens 5869-71; RX 84)

83. In the spring of 1970, James Huygens, then president of CB Portland, contacted a representative of CB West Coast in Salem, Oregon, which had been acquired by respondent, to discuss and inspect CB West Coast's computerized credit reporting system. (Huygens 5883-84; Aitken 10,727, 10,842-843) After a series of meetings with respondent's representatives, the CB Portland Board recommended that the credit reporting assets of the bureau be sold

to respondent. (Winthrop 5627-31; Huygens 5885-86; Aitken 10,727-733; Rutherford 13,281-289) On January 2, [28] 1971, the bureau's credit reporting assets, including its credit files, equipment and fixtures, were sold to respondent for \$65,000 in cash and a promissory note with principal and interest totalling \$260,000, or a total purchase price of \$325,000. The purchase agreement expressly provided that these assets cannot be sold to any other company without the consent of Retail Credit Association of Portland, which continues in existence as a merchants' trade association. (Rotenberg 5583; Winthrop 5630-31; Huygens 5852-54, 5888-89; Rutherford 13,121-122; CX 459)

III. THE CREDIT REPORTING INDUSTRY

84. The Retail Credit Company, with its subsidiaries, is engaged in the business of gathering and reporting information on individuals and on commercial organizations to businesses for credit, insurance, claim, employment and marketing purposes. (Rutherford 13,017-018; CX 117c; CX 167b-c; CX 363z20, z37a; CX 622b) Within this overall industry are a number of submarkets, which will be discussed below. Credit reporting is a separate line of service from other types of business reporting. (Rutherford 13,390-391; JX Rutherford Dep. 61)

A. Credit Reports

85. Credit reports on individuals are used by credit grantors for the purpose of making decisions regarding the extension, continuance or financial settlement of credit to those individuals. (CX 117a; CX 142h-i; Crowley 388; Brund 1102)

86. A credit grantor is a firm or individual which extends credit to its customers in the conduct of its business. Credit grantors include retail merchants, banks and other financial institutions, oil companies, travel and entertainment card companies ("T&E" companies), and professionals. (F. Smith 346-47; Kopriva 477; Spafford 8882-83)

87. Credit reports include in-file and updated consumer reports, mortgage reports, tenant reports, trade and employment reports and character reports. (Pinger 1270; Daussin 1367, 1497-98; Rutherford 13,503, 13,662, 13,669-72; CX 30; CX 64; CX 354e) [29]

88. Credit reports generally contain four basic types of information: identification of the subject (*e.g.*, name, address, and marital status), employment history, trade data and public record data (*e.g.*, judgments and bankruptcies). (Daussin 1367; 1497-98; Pinger 6920;

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Spafford 8891-92) Credit reports sold by RCC, RCA and CBI contain this information. (CX 30, pp. 9, 13, 21, 24; CX 64h; RX 22; RX 227; RX 228)

89. Credit reports prepared by credit reporting agencies (see complaint par. 1(a)) are usually in-file (based on pay habit or trade and other information already in the files of the firm making the report) or updated reports (where data in the files of the credit reporting agency is further updated or verified by phone or mail at the time the report is made). (Daussin 1409; Tamalis 2726; Rutherford 3847-49; McGregor 5839; Jensen 6427; Chilton 8669-70; Sasser 9287) Reports may also be produced through verification of information contained in a credit application. (McGregor 5836-37; Rutherford 13,719)

90. Credit reports may also be based upon information developed by a credit investigatory agency. These reports focus more on the reputation and character of the applicant than on his credit history, and may be developed through field investigation, including personal interviews. (Daussin 1486-87, 1406; Laurens 1941, 1956; King 3360-61; Rutherford 13, 131) These investigative reports are more expensive than file reports, and require more highly trained and skilled personnel. (Rutherford 13,027, 13,131, 13,080-081) Credit bureaus generally do not engage in field investigation. (Spafford 8892; Sasser 9278)

91. Most credit bureaus sell in-file and updated reports, and will develop credit information on individuals on whom they do not already possess a file. (Julien 560; Daussin 1904; Tamalis 2727; Sasser 9277-78; Rutherford 13,367)

92. Mortgage reports are used to determine whether to make a mortgage loan to an applicant, and are sold to banks, mortgage companies, savings and loan institutions and real estate companies. (Gauss 635-36; Spafford 8891-95; Aitken 10,887-894) [30]

93. Mortgage reports are a type of credit report (Daussin 1498; Jensen 6427; Sasser 9277; Rutherford 13,186), and are produced and sold by credit bureaus. (Gauss 633; T. Smith 1004; Daussin 1496, 1498; Tamalis 2727; King 3360-61; Jensen 6427; Spafford 8895; Sasser 9277; Carey 9475; CX 47c)

94. Mortgage reports prepared by credit bureaus include the same types of information contained in other credit reports, including pay habit data, but are usually more extensive and detailed and include information on income and net worth. (Gauss 634-35; Kopriva 468-69; T. Smith 1005-06, 1047; Tracey 2007; King 3360-61; Jensen 6427-29; Spafford 8885)

95. Credit bureau mortgage reports are based upon information

contained in the credit bureau's files or on the credit application. That information, especially concerning trade accounts and employment, is updated and verified by mail or telephone, including in some cases a telephone conversation with the applicant. References may be contacted as well. (Kopriva 468-69; Daussin 1406; Tamalis 2726-27; King 3360-61; Jensen 6428-29; Chilton 8669-70; Sasser 9287)

96. Mortgage reports prepared by credit reporting agencies are not investigative reports. (Daussin 1406; Spafford 8894)

97. Mortgage reports are more expensive than other credit reports (F. Smith 357-58; Kopriva 469-71; Pinger 6904), are occasionally prepared by distinct employees of the credit bureau (Gauss 634; T. Smith 1046), and may be produced on a special form. (F. Smith 357-58; Kopriva 468-69; T. Smith 1046; Pinger 6904)

98. Credit bureaus compete with RCA in the sale of mortgage reports in a number of areas of the United States. (Homeda 2060; Devers 8356-57; F. 143)

99. Mortgage reports are also prepared by credit investigative agencies. These reports often involve extensive field investigation and are much more expensive than credit bureau mortgage reports. (F. Smith 265-66; King 3360-61) [31]

B. Credit Bureaus

100. Credit bureaus are engaged primarily in the business of selling in-file and updated credit reports. Credit bureaus collect information on the history of repayment of credit by individuals who reside in the service area of the bureau, store it in files, and sell it to credit grantors who use it to evaluate the credit worthiness of consumers to whom they may extend credit. A credit bureau must have a data base containing information on the individuals who reside in the community in which it is located. Some of the information is secured from public record sources; the remainder is acquired from credit grantors, who must be induced to provide it voluntarily. Information from credit grantors must be supplied on a regular basis so that the bureau can keep its files current and up to date. Thus, credit grantors are both suppliers of, and customers for, credit information maintained by credit bureaus. (Erichson 2082; Spafford 9812; White 11,618-621)

101. In order to qualify for membership in Associated Credit Bureaus, Inc., a national trade association, a bureau must maintain files on residents of the area within which it operates, secure the support and use of its services by a number of major and representative credit grantors in all lines of business, and acquire

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trade information from a representative cross-section of credit grantors. (Spafford 9812-14; CX 552)

102. In order successfully to operate its business, a credit bureau must sell reports which are complete and accurate, current, promptly available, and reasonably priced. (Laurens 1952; Holden 9156)

103. Credit bureaus are represented by a national trade association, Associated Credit Bureaus, Inc. (ACB). (Kopriva 466, 497; Pinger 1272; Spafford 1586, 8912; CX 624) There is another trade association of credit bureaus known as International Credit Bureau Managers (ICBM). A credit bureau may be a member of both organizations. (Erichson 2235)

104. The precise number of credit bureaus operating in the United States is unknown. In 1970 there were approximately 2,100 credit bureau members of ACB, some of which [32] were under common ownership. In 1973 the number was approximately 2,000. (Spafford 1565) ACB membership grew from 1,893 in 1958 to 2,053 in 1972. (CX 213c) The number of non-ACB bureaus is undetermined. However, CBI had executed service agreements with 285 non-ACB member bureaus as of November 1970, and with 404 such bureaus by January 1974. (RX 282)

105. There has traditionally been only one credit bureau operating in each community. Many credit bureaus are owned by the merchants who use its services. These merchants, preferring to deal with a single source of credit information, have sometimes refused to cooperate with competing credit bureaus, either by purchasing their reports or supplying them with trade information. (See Fs. 190, 197) In January 1975, there were only 17 cities in the United States in which ACB recognized more than one credit bureau member. (CX 624)

C. Credit Report Brokerage Firms

106. In order to expedite and simplify the purchase of credit reports by large credit grantors with regional or national operations, credit report brokerage companies have developed in the credit reporting industry. The largest of these firms in 1970 was Credit Bureau Reports, Inc. (CBR), which has more than 2,000 local credit bureaus under contract. (Erichson 2069; White 11,757-759) Other brokerage firms include Credit Services International (CSI), a division of ACB, and Credit Marketing Services (CMS), a subsidiary of CBI, which was involved in brokering credit reports until January 1973. (Erichson 2082-83; Spafford 8861; White 11,759-764; Rutherford 13,035-039, 13,158-165; CX 547) The brokering procedure is

