

used to gather data from online distribution systems? What are the likely benefits of such technologies? Have on-line distributors limited access such technologies to their data? How? What are the business justifications for such limitations? What are the relevant competition issues?

The Commission welcomes suggestions for other questions that also should be addressed. Proposed questions, identified as such, may be sent by electronic mail to ecommerce@ftc.gov.

By direction of the Commission.

Donald S. Clark,
Secretary.

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FEDERAL TRADE COMMISSION

[File No. 001 0067]

DTE Energy Company, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 23, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC/S-2105, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-2712.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

full text of the consent agreement package can be obtained from the FTC Home Page (for March 22, 2001), on the World Wide Web, at "<http://www.ftc.gov/os/2001/03/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order and Draft Complaint To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from DTE Energy Company ("DTE") and MCN Energy Group Inc. ("MCN") (collectively the "proposed Respondents") an Agreement Containing Consent Order (the "proposed consent order"). The proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy the anticompetitive effects that are described in the Commission's draft complaint and that are likely to arise from the merger of DTE and MCN.

II. Description of the Parties and the Proposed Acquisition

DTE, headquartered in Detroit, Michigan, is a holding company with subsidiaries engaged in various energy-related businesses. DTE's principal operating subsidiary, The Detroit Edison Company ("Edison"), is a public utility engaged in the generation, transmission, distribution, and sale of electricity in southeastern Michigan, including the Detroit metropolitan area.

MCN, also headquartered in Detroit, Michigan, is a diversified energy holding company, with its primary operations involved in the production, gathering, processing, transmission, storage, and distribution of natural gas. MCN is the parent of Michigan Consolidated Gas Company ("MichCon"), a natural gas utility

serving areas throughout the State of Michigan, including southeastern Michigan. MichCon distributes natural gas, and Edison distributes electricity, in a portion of southeastern Michigan consisting of the city of Detroit and all or parts of Macomb, Monroe, Oakland, Washtenaw, and Wayne Counties (the "Overlap Area").

Pursuant to an Agreement and Plan of Merger dated October 4, 1999, and amended November 12, 1999, MCN plans to merge with a subsidiary of DTE. Each share of MCN common stock will be converted into the right to receive either \$28.50 in cash or 0.775 shares of DTE common stock, subject to proration. The transaction is valued at approximately \$2.6 billion in cash and stock, plus the assumption of approximately \$2 billion in debt.

The Commission has carefully examined all areas in which the proposed merger of DTE and MCN might be anticompetitive. The Commission found that the transaction raises competitive concerns in the Overlap Area, as described in the draft complaint, and the Commission proposes to take action to remedy these potential anticompetitive effects.

III. The Draft Complaint

The draft complaint alleges that the merger of DTE and MCN would lessen competition in the local distribution of electricity and the local distribution of natural gas in the Overlap Area. According to the complaint, MichCon is the only distributor of natural gas within the Overlap Area. Similarly, except for the cities of Detroit and Wyandotte, which operate their own municipal electric utilities, Edison is the only distributor of electricity within the Overlap Area. Following the merger, Edison would effectively control the distribution of both electricity and natural gas within the Overlap Area.

According to the complaint, entry into the distribution of electricity and the distribution of natural gas within the Overlap Area is effectively blocked by regulatory constraints, and would not be timely, likely or sufficient to prevent anticompetitive effects that may result from the merger.

The draft complaint describes three ways in which the proposed merger would lessen competition. Each of these three ways is described below.

A. Self-Generation of Electricity

According to the complaint, natural gas is the fuel of choice for new electricity generation in the Overlap Area. Other fuels are not likely to be used for new electricity generation because of various disadvantages

relative to natural gas. Coal and fuel oil, for example, have environmental problems that do not exist with natural gas. As a result, virtually all new electricity generation in the Overlap Area is likely to rely on natural gas as its source of fuel.

The complaint alleges that customers in the Overlap Area who need electricity have limited options. They can have electricity delivered by Edison, or they can self-generate electricity using natural gas delivered by MichCon. Self-generation can take several forms, including cogeneration, generation by municipalities (such as the city of Wyandotte), and emerging forms of distributed generation, such as microturbines and fuel cells, that are fueled by natural gas. According to the complaint, MichCon has aggressively sought to encourage customers to install gas-powered self-generation equipment that would allow customers to minimize or eliminate the purchase of electricity from Edison.

The complaint charges that DTE and MCN are competitors in the Overlap Area because Edison distributes electricity and MichCon distributes natural gas used for the self-generation of electricity. The complaint further charges that the proposed merger may substantially lessen competition or tend to create a monopoly in the distribution of electricity and natural gas in the Overlap Area in certain ways, including: (1) By eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas used for the self-generation of electricity in the Overlap Area, and (2) by increasing the likelihood that market power will be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas used for the self-generation of electricity, each of which increases the likelihood of anticompetitive prices and reduced competition in the distribution of electricity and the distribution of natural gas in the relevant market.

B. The City of Detroit

The city of Detroit operates a municipal utility (the Public Lighting Department, or "PLD") that distributes electricity to industrial, business and public sector customers in Detroit. The PLD competes directly with Edison for new non-residential customers in Detroit.

According to the complaint, the PLD has two sources of electricity. It purchases some power at wholesale, which is delivered over Edison's power lines, and it generates the rest of its requirements using natural gas

delivered by MichCon. The PLD has no viable option for natural gas delivery other than MichCon, and after the merger will have to rely on its only direct electricity competitor for delivery of natural gas.

The complaint charges that the proposed merger, if consummated, may substantially lessen competition or tend to create a monopoly in the distribution of electricity in the city of Detroit in certain ways, including: (1) By decreasing or eliminating competition in the city of Detroit in the distribution of electricity and the distribution of natural gas used to produce electricity, and (2) by facilitating DTE's ability to raise the costs of the Detroit PLD, each of which increases the likelihood of anticompetitive prices and reduced competition in the distribution of electricity and the distribution of natural gas used to generate electricity in the city of Detroit.

C. Competing Applications

Electricity and natural gas compete directly for certain commercial and industrial applications. According to the complaint, some customers can choose either natural gas or electricity for specific energy needs, such as powering air compressors, commercial cooking, and various process applications. Customers who choose natural gas for these applications must use natural gas delivered by MichCon, and customers who choose electricity must use power delivered by the local electric utility, usually Edison. MichCon has aggressively sought to convert customers using electricity for such applications to natural gas, typically by attempting to convince customers of the relative economic benefits of natural gas compared to electricity.

The complaint charges that the proposed merger, if consummated, would substantially lessen competition or tend to create a monopoly in the distribution of electricity and natural gas in certain ways, including: (1) By eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas in the Overlap Area, and (2) by increasing the likelihood that market power will be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas, each of which increases the likelihood of anticompetitive prices and reduced competition for the distribution of electricity and the distribution of natural gas in the relevant market.

IV. Terms of the Proposed Consent Order

The proposed consent order is designed to remedy the Commission's competitive concerns about the proposed merger. Under Paragraph II of the proposed consent order, the proposed Respondents must divest certain assets (the "Divested Assets") to Exelon Energy Company ("Exelon") pursuant to and in accordance with the terms of a Divestiture Agreement between MichCon and Exelon, no later than five (5) days after the proposed merger is consummated.¹ The Divestiture Agreement consists of two separate agreements: (1) An "Easement Agreement" entered into between MichCon and Exelon, and (2) an "Auditor Agreement" entered into between MichCon, Exelon, and a third party that serves an oversight function with respect to the Easement Agreement between MichCon and Exelon.

The Easement Agreement has been approved by the Michigan Public Service Commission as a special contract between MichCon and Exelon. See Order Approving Special Contract, In the Matter of the Joint Application of Michigan Consolidated Gas Company and Exelon Energy Company for Ex Parte Approval of a Special Contract for Certain Transportation and Storage Rights, Case No. U-12825, February 14, 2001.

The Easement Agreement conveys to Exelon an easement over MichCon's local natural gas distribution system that will allow Exelon to engage in the distribution and storage of natural gas in the Overlap Area. Pursuant to the Easement Agreement, Exelon is entitled to the use of five billion cubic feet ("Bcf") of annual transportation capacity ("Initial Capacity") to serve any end use customers within the Overlap Area. Exelon is then entitled to an additional 15 Bcf of annual transportation capacity ("Supplemental Capacity"), in increments of 1 Bcf, that must serve at least 50% Electric Displacement Load, (Electric Displacement Load, or "EDL," includes on-site electric power generation such as cogeneration, municipal generation, emerging forms of distributed generation (such as fuel cells and microturbines), and other gas-fired

¹ However, if the Commission determines to make the Order final, but notifies the proposed Respondents either that Exelon is not an acceptable acquirer, or that the Divestiture Agreement is not an acceptable manner of divestiture, then proposed Respondents are to divest the Divested Assets, at no minimum price, within 90 days of the date the Order becomes final, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

electric displacement equipment.) If Exelon uses all of the Initial Capacity and Supplemental Capacity (a total of 20 Bcf, of which 7.5 Bcf must be used for EDL), then Exelon is entitled to additional transportation capacity ("Growth Capacity") for use in serving on-site generation customers within the Overlap Area. Exelon also is entitled to storage capacity equal to 10% of its Initial Capacity and Supplemental Capacity. Charges for the Initial Capacity, Supplemental Capacity, and Growth Capacity are set at levels designed to allow Exelon to compete with MichCon in the Overlap Area, and to provide Exelon with incentives to distribute natural gas for EDL applications.

The Easement Agreement contains a number of provisions designed to ensure Exelon's ability to be a viable competitor. In particular, the agreement requires the parties to appoint an independent third-party auditor with knowledge of the natural gas industry to oversee the Easement Agreement and to perform such services as are necessary to effectuate the agreement, including arbitration of disputes and other duties and responsibilities designed to ensure that MichCon cannot unreasonably discriminate against Exelon. (Easement Agreement ¶ D-17.) In addition, the Easement Agreement requires MichCon to repair and replace all components of the distribution system necessary for the proper operation thereof, and allows the Auditor to make repairs or replacements, at MichCon's cost, if MichCon fails to do so. (Easement Agreement ¶ 7.) Further, the agreement allows Exelon to expand the system if necessary, either at MichCon's expense or with the assistance of an expansion allowance paid for by MichCon. (Easement Agreement ¶ D-5.) Moreover, the Agreement requires that MichCon give Exelon and the Auditor advance notice of important operational events that may impact the distribution system, such as scheduled maintenance, outages, changes in operating standards, planned new receipt points, proposed modifications to nomination or measurement practices or quality specifications, and any other events that may affect Exelon or Exelon's ability to service its customers, and empowers the Auditor to revise or modify any such events if necessary to prevent an adverse impact on Exelon. (Easement Agreement ¶ D-6.)

The proposed consent order also contains other provisions designed to ensure the continuation of a viable and competitive alternative supplier of natural gas distribution services to Electric Displacement Load customers

in the Overlap Area. For example, Paragraph II.B.1 of the proposed consent order requires that proposed Respondents maintain, repair, and replace all components and other aspects of the MCN Distribution System (1) necessary for the proper or safe operation of that system; and (2) in full compliance with all rules and regulations of any federal or state agency, or any other governmental entity, having jurisdiction over any aspect of the MCN Distribution System. Paragraph II.B.2 of the proposed consent order requires that proposed Respondents operate the MCN Distribution System in a reasonable and non-discriminatory manner, and in full compliance with all rules and regulations of any federal or state agency, or any other governmental entity, having jurisdiction over any aspect of the MCN Distribution System.

Paragraph II.B.3 deals with the Auditor, and provides that the Auditor shall have the power to take all actions as in the Auditor's judgment are necessary and appropriate to effectuate the purposes of the Divestiture Agreement, including the right to propose changes to the Divestiture Agreement necessary to ensure the competitive viability of the Acquirer, and shall have free access to all of proposed Respondents' books, records, information, systems, and facilities as deemed reasonably necessary by the auditor to monitor proposed Respondents' performance under the Divestiture Agreement. In obtaining and utilizing proprietary information, the Auditor is required to observe confidentiality restrictions designed to prevent the unauthorized disclosure of such information.

Pursuant to Paragraph II.B.4, Respondents are required to provide Exelon with a list of all customers to which MCN transports natural gas in the Overlap Area, including the name, address, and rate classification for each such customer, and a statement indicating whether each such customer utilizes natural gas for Electric Displacement Load. In addition, under Paragraph II.B.5, Respondents must provide to the Auditor the results of a study conducted by MCN of Electric Displacement Load opportunities in the Overlap Area. Respondents must send a letter to each customer in the study advising the customer that gas distribution services may be purchased from Exelon and asking if the customer wishes the Auditor to provide the customer's study information to Exelon.

Paragraph II.B.6 provides that, for two years after the date the Order becomes final, Respondents shall promptly

comply with any request of any customer in the Overlap Area to terminate its transportation or distribution contracts with MCN, without cost or penalty to such customer, to enable such customer to purchase gas distribution or transportation services provided by Exelon.

The proposed consent order also contains provisions dealing with the appointment of an alternative acquirer if Exelon terminates the Divestiture Agreement, as well as trustee provisions dealing with the responsibilities of any trustee appointed to accomplish any divestiture required by the order.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within sixty days following the date on which the order becomes final, every sixty days thereafter until the divestitures are completed, and annually for a period of twenty years.

The Auditor Agreement, executed by MichCon, Exelon and the Auditor, defines the duties, powers and obligations of the Independent Auditor required by Paragraph II.B.3 and Paragraph D-17 of the Easement Agreement. The Auditor has the ability to take all actions necessary and appropriate to effectuate the purposes of the Easement Agreement, including the right to assess consequential damages against MichCon if MichCon operates the distribution system in a manner that is prejudicial to Exelon. (Auditor Agreement ¶ 2.) The Auditor also is responsible for arbitrating disputes between the parties, as well as for performing other necessary duties and responsibilities under the Easement Agreement, such as verification of Exelon's Electric Displacement Load volume, system repair and maintenance if MichCon fails to do so, designation of applications that qualify as Electric Displacement Loads, resolution of complaints by Exelon, modification of operational changes that may adversely impact Exelon, and related duties and responsibilities. (Auditor Agreement Sch. A; Easement Agreement ¶¶ 3, 7, D-1(j), D-2, D-4, D-6.)

The proposed buyer of the Divested Assets, Exelon Energy, is one of the largest unregulated suppliers of electricity and natural gas in the nation. It is a unit of Exelon Corporation, which was formed from the merger of Unicom Corporation and PECO Energy Company. The parent company has operations engaged in the generation, transmission, distribution and sale of electricity, the supply of natural gas and natural gas transportation services, the

sale of distributed generation products, and related businesses. The company is extremely knowledgeable about the utility business and the distribution of electricity and natural gas. It currently markets natural gas to buyers in Michigan (as well as in other states), and has an affiliate that is engaged in the distribution of microturbines and distributed generation equipment.

The Commission's goals in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer must not itself present competitive problems. Exelon is a major energy company with substantial experience in natural gas, electricity, and the operation of utilities. The Commission believes that Exelon is well qualified to operate the divested assets and that divestiture to Exelon will not be anticompetitive.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received

during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of assets to Exelon, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order, nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01-7785 Filed 3-28-01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Case Plan Requirement, Section 422, 471(a) (16) and 475(5) (A) of the Social Security Act.

OMB No.: 0980-0140.

Description: Under section 471(a) (16) of title IV-E of the Social Security Act (the Act), to be eligible for payments States must have an approved State plan that provides for the development of a case plan [as defined in section 475(1)] for each child receiving foster care maintenance payments, and that provides a case review system that meets the requirements in section 475(5) and 475(6). Through these requirements, States also comply, in part, with title IV-B, section 422(b) (10) of the Act, which assures certain protections for children in foster care.

Respondents: State title IV-B and title IV-E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case Plan	714,056	1	2.62	1,872,392
Estimated Total Annual Burden Hours				1,872,392

Additional Information:

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 23, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01-7684 Filed 3-28-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: IV-E Foster Care and Adoption Financial Report.

OMB No.: 0970-0205.

Description: This form is used by States and Puerto Rico to facilitate the reporting of expenditures for the Foster Care and Adoption Assistance programs. State agencies (including Puerto Rico) use this form to report data on a quarterly basis. The form provides specific data regarding financial disbursements, obligations and estimates. It provides States with a mechanism to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' ability to issue grant awards and monitor expenditures. This form is also used to prepare ACF budget submission to Congress.

Respondents: States and Puerto Rico.