



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 111 0172]**

**CoStar Group, Inc., Lonestar Acquisition Sub, Inc., and LoopNet, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**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 draft complaint 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 May 29, 2012.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "CoStar LoopNet, File No. 111 0172" on your comment, and file your comment online at <https://ftcpublishcommentworks.com/ftc/costarloopnetconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Justin A. Stewart-Teitelbaum (202-326-3597), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, 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 April 26, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write "CoStar LoopNet, File No. 111 0172" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/costarloopnetconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “CoStar LoopNet, File No. 111 0172” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW,

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 29, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from CoStar Group, Inc. ("CoStar"), Lonestar Acquisition Sub, Inc., and LoopNet, Inc. ("LoopNet") (collectively, "Respondents"). Pursuant to an Agreement and Plan of Merger dated April 27, 2011, Lonestar Acquisition Sub, Inc., a wholly-owned subsidiary of CoStar, intends to acquire all of the common stock of LoopNet in exchange for cash and stock considerations with a total equity value of approximately \$860 million (the "acquisition"). The Commission's Complaint alleges that CoStar and LoopNet have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act, by eliminating actual, direct, and substantial competition between CoStar and LoopNet, and between CoStar and Xceligent, Inc. ("Xceligent"), and increasing the likelihood that CoStar will exercise market power unilaterally in the provision of commercial real estate ("CRE") listings databases and information services.

The proposed Consent Agreement would resolve these competitive concerns by requiring the divestiture of LoopNet's interest in Xceligent, CoStar's most direct competitor on a product basis. Owing to the circumstances surrounding the acquisition and the characteristics of the industry at issue, the proposed Consent Agreement further imposes certain conduct requirements to assure the continued viability of Xceligent as a competitor to the merged firm and to reduce barriers to competitive entry and expansion. These additional provisions will facilitate Xceligent's geographic expansion and prevent foreclosure of Respondents' established customer base. Together, the divestiture and conduct obligations will make Xceligent a stronger independent competitor to the merged firm. The proposed Consent Agreement will thus remedy the loss or diminution of competition that would result from the acquisition.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the proposed Decision and Order ("Order").

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Order, nor does the analysis modify their terms in any way.

#### **I. Respondents and Other Relevant Entities**

### **A. CoStar**

CoStar is the largest provider of CRE information services in the United States, offering a researched listings database with nationwide coverage. CoStar proactively tracks and aggregates CRE listings and information to create and maintain an in-depth and comprehensive CRE database. CoStar is a publicly traded, for-profit corporation.

### **B. LoopNet**

LoopNet operates the most heavily trafficked CRE listings database in the United States. LoopNet provides a platform for CRE market participants to post listings and other detailed information about available properties, and aggregates that user-generated content into a database searchable by the public. Through this platform, LoopNet also offers some CRE information services with nationwide coverage. LoopNet is a publicly traded, for-profit corporation.

Starting in 2007, LoopNet acquired a substantial ownership stake in Xceligent, a provider of CRE information and listings services, with coverage focused on the Midwest and South. Today, LoopNet provides Xceligent with funding and information to aid Xceligent in expanding its geographic scope.

### **C. Xceligent**

Xceligent, a privately held corporation, is a third leading provider of CRE information services in the United States, offering a researched listings database. Xceligent's model closely resembles CoStar's, with a research staff that proactively tracks and aggregates CRE listings and information to create and maintain an in-depth and comprehensive CRE database.

## **II. The Proposed Complaint**

CoStar's acquisition of LoopNet presents antitrust concerns in the markets for CRE

listings databases and CRE information services. Listings databases provide a means for parties to CRE transactions to publicize and to search for available properties for sale and for lease. CRE information services compile the data industry participants need to evaluate CRE assets and opportunities, informing decisions ranging from the determination of asking price to whether to execute a given sale or lease agreement. Real estate brokers, lenders, investors, developers, appraisers, government agencies, and others connected to the CRE industry require listings databases and information services with geographic coverage that corresponds to their unique scope of operations. The coverage needs of a given customer may be as broad as the entire United States, or as narrow as a city neighborhood.–

CoStar and LoopNet are the only two providers of CRE listings databases with nationwide coverage. CoStar is the only current provider of full-inventory, research verified CRE listings databases and information services with national coverage. CoStar’s closest competitor on a product basis, Xceligent, today provides full-inventory, research-verified listings databases and information services in 33 metropolitan areas. Other providers offer CRE listings databases and information services with coverage of a particular local or regional area or of a particular subset of the total CRE landscape, but none have achieved the critical mass of users and data that CoStar and LoopNet possess today.

The acquisition may substantially lessen competition in these relevant markets by eliminating actual, direct, and substantial competition between CoStar and LoopNet, and between CoStar and Xceligent because of LoopNet’s substantial ownership stake in Xceligent. The acquisition therefore may also increase the likelihood that CoStar will exercise market power unilaterally.

Timely, competitively meaningful entry is unlikely to mitigate these anticompetitive

effects. Significant network effects characterize the market for CRE listings databases and create a substantial barrier to new entry. For both listings databases and information services, entry and expansion are difficult, costly, and time-consuming.

### **III. The Proposed Consent Agreement**

The proposed Consent Agreement and the Order include the obligation to divest certain LoopNet data to Xceligent and conduct requirements that may modify Respondents' current and future contractual agreements with its customers. These provisions are intended to ensure that the remedy is responsive to the history and characteristics of the relevant markets. The Order incorporates these carefully-tailored provisions to assure the successful implementation of the remedy and to effectuate the Order's remedial purpose. Some of these provisions are highlighted below.

#### **A. Divestitures**

The proposed Consent Agreement is intended to remedy the acquisition's alleged anticompetitive effects by, among other things, requiring the divestiture of LoopNet's interest in Xceligent to DMG Information, Inc. ("DMGI"). DMGI is a U.S.-based subsidiary of British media and data conglomerate Daily Mail & General Trust, PLC, a publicly traded, for-profit firm with 2011 revenues of nearly £2 billion. DMGI specializes in business-to-business information services and has significant experience in the CRE information space. DMGI's strong, existing presence in the CRE information space includes substantial and long-standing investments in CRE information firms including Trepp, LLC; Real Capital Analytics, Inc.; Environmental Data Resources, Inc.; and BUILDERadius, Inc.

Respondents have reached an agreement to sell to DMGI LoopNet's interest in Xceligent and in the URL "commercialsearch.com." In addition to these assets, Respondents have agreed

to divest to DMGI certain LoopNet data that will facilitate Xceligent's expansion into new metropolitan areas. The need for this data divestiture arises from the unique historical relationship between LoopNet and Xceligent and from the high initial costs associated with entry and expansion in the relevant markets. These divestitures assure the continued viability of Xceligent as CoStar's competitor and enable Xceligent to grow rapidly into a more complete, national listings database and information services alternative to the merged firm. DMGI is well-equipped to replace LoopNet and become the controlling shareholder of Xceligent. DMGI has the resources and capability to provide Xceligent with the financial and strategic assistance required for effective and efficient continued expansion. The divestitures will therefore preserve the existing competition between CoStar and Xceligent and will allow Xceligent to replace any competition lost between CoStar and LoopNet as a result of the acquisition.

#### **B. Conduct Provisions**

The Order imposes certain conduct requirements that will lower entry barriers to the markets for CRE listings databases and information services. Paragraph III.A. of the Order prevents Respondents from restricting, directly or indirectly, customers' ability to support Xceligent. The history and data-driven nature of the relevant markets, coupled with the high costs of data collection and the network effects inherent in the industry, have led to significant barriers to entry and expansion. Paragraph III.A. ensures that industry participants, including the largest national CRE brokerage firms, can bolster entry efforts – whether through financial investment, CRE information-sharing, or public endorsement – without fear of reprisal. This provision thus reduces entry barriers by allowing industry participants to assist in the development and growth of Xceligent.

In order to prevent long-term CoStar subscription commitments from foreclosing

competitive entry or expansion, Paragraph III.B. of the Order requires Respondents to allow current and future customers, without penalty, to terminate their existing contracts with twelve (12) months' notice. This provision ensures that Xceligent has available customers in any and all metropolitan areas where they offer competing products. The resulting revenue opportunities and feasibility of gaining broad customer acceptance will make entry or expansion into local coverage areas more efficient and effective.

Similarly, Paragraphs III.F. and III.G. of the Order include provisions that aim to protect Xceligent for a limited period while it expands the breadth and geographic scope of its services. These restrictions are necessary because of the importance of such expansion in ensuring an effective remedy. Paragraph III.F. prevents Respondents from conditioning the sale, lease, or license of, or the subscription to, any of Respondents' products on the sale, lease, or license of, or the subscription to, any other of Respondents' products. Paragraph III.F. also prohibits Respondents from requiring customers to subscribe to multiple geographic coverage areas in order to gain access to a single coverage area of interest. These protections extend for a period of five (5) years post-acquisition. Paragraph III.F. also requires Respondents to continue to offer all currently available products on a stand-alone basis for three (3) years post-acquisition. A related provision, Paragraph III.G., prohibits Respondents from limiting the use of the REApplications product, a software tool for managing market research. For three (3) years after the Order date, if Respondents continue to offer REApplications, Paragraph III.G. provides that customers shall be permitted to use REApplications in support of, or in connection with, their purchase, lease, or license of CRE database services from Respondents' competitors. Together, Paragraphs III.F. and III.G. ensure that customers are free to turn to Xceligent or other firms for the services those firms provide, without forfeiting their access to other CoStar products on

which they rely. These provisions therefore advance the Order's remedial purpose in recognition of, and in response to, the relatedness of the products at issue, the indispensable nature of those products, and the currently limited selection of providers to customers of those products.

Paragraphs III.C. and III.D. of the Order provide certain protections to Respondents' current and future customers so that they are free to avail themselves of their rights and opportunities post-acquisition. Paragraph III.C. prohibits Respondents from intentionally disrupting or limiting service to customers except in specific, enumerated circumstances. This provision ensures that Respondents' customers are protected in their ability to conduct their day-to-day business by designating inappropriate suspension of service as a retaliatory act punishable under Paragraph III.H. of the Order. In order to address the possible chilling effects of the industry's historically litigious reputation, Paragraph III.D. grants Respondents' current and future customers the right to resolve any disputes with Respondents through arbitration.

### **C. Compliance and Notification Requirements**

Paragraph V. of the Order requires Respondents to provide notice to the Federal Trade Commission thirty (30) days prior to any planned acquisition of any firm that gathers, markets, or sells CRE listings or CRE information in the United States for a period of five (5) years. For an additional five years thereafter, the Order requires Respondents to provide prior notice of planned acquisitions of any such firms with revenues of \$15 million or greater.

Paragraph VI. of the Order appoints Guy Dorey as Monitor to assure Respondents' ongoing compliance with their obligations and responsibilities under the Order. Among other responsibilities, Paragraph VI. empowers the Monitor, at Respondents' expense, to review and audit compliance with Order provisions relating to the divestitures of assets and information and to customers' rights to support Xceligent.

To assure that Respondents fully comply with the obligations of Paragraph II. of the Order, Paragraph VII. of the Order allows the Commission to appoint a Divestiture Trustee to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets and information.

Paragraph VIII. of the Order requires Respondents to submit periodic reports of compliance. The Order requires reporting every sixty (60) days for two (2) years following the Order date, and annually thereafter until the Order terminates in ten (10) years.

Paragraph IX. of the Order requires Respondents to give the Commission prior notice of certain events that might affect compliance obligations arising from the Order.

**D. Additional Provisions**

Paragraph X. of the Order provides that the Order shall terminate after ten (10) years.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary.

[FR Doc. 2012-10550 Filed 05/01/2012 at 8:45 am; Publication Date: 05/02/2012]