

Elimination of Digital DIY Tax Prep Disrupter Should Concern Antitrust Law Enforcers

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The Antitrust Division of the U.S. Department of Justice is taking a close look at the announced \$7.1 billion acquisition of market disruptor Credit Karma by Intuit Inc. According to an internal Intuit memo obtained by ProPublica, the DOJ is looking at “the influence that Intuit’s purchase of Credit Karma will have on consumer tax preparation platforms and [the] software market.” And, for the reasons discussed below, there is a good chance the DOJ will ultimately conclude the merger violates the Clayton Act and file suit to challenge it.

The Digital Tax Prep Market.

Intuit has long dominated digital tax preparation and currently controls more than 70% of this market. Credit Karma introduced its tax prep software in 2016 and now controls roughly 3% of the market, a 50% increase from the prior year. H&R Block is the only other significant competitor and controls roughly 14% of the market. The transaction is therefore a 3-to-2 that creates a virtual duopoly in the digital tax preparation market.

Intuit’s Anti-Consumer History.

According to ProPublica, Intuit has engaged in a twenty-year campaign to fend off government initiatives designed to make tax filing easier and less expensive for Americans. For example, in the early 2000s, the IRS considered developing free tax filing software. Intuit lobbied against the project and ultimately entered into an agreement with the IRS to provide its own free version to filers making less than \$66,000 annually. While Intuit developed this free version, it also intentionally hid it from search engines like Google, making it harder for would-be users to find in the hopes many would use its paid version instead.

Intuit also uses several “dark patterns” – design tricks to get users to do things they do not necessarily mean to do – to maximize purchases of its tax prep software. For example, after expending significant time inputting information into what they believed was a free software version, a large portion of users are told they must either purchase a version of Intuit’s software or start over and have their information deleted. Intuit also relies on a marketing concept referred to internally as “FUD” to tap into Americans’ fear, uncertainty, and doubt about the tax filing process.

Lawmakers Question Merger.

Based on Intuit's dominance in the digital tax prep market, its checkered past, and Credit Karma's pro-consumer role as market disruptor, several lawmakers were upset by the merger and asked the DOJ to closely scrutinize it.

Senate Finance Committee Ranking Member Ron Wyden (D-OR) sent a letter to the DOJ that stated: "Intuit's highly-profitable tax preparation business depends both on duping low-income tax-filers and in eliminating the threat posed by universal free-filing options from competitors like Credit Karma. Without Credit Karma's free tax filing product, consumers will have far fewer choices and many of them will have to pay \$60 and up for a product that is available for free today."

Wyden added that the deal also may negatively impact consumer privacy, stating "Credit Karma provides free credit monitoring services to 100 million consumers — an essential service these days, given the frequency of mega data breaches." As a result, "the company holds a huge amount of sensitive consumer data, which Intuit will be able to monetize in ways that are counter to the interests of the Americans from whom it was collected. The acquisition of such a large amount of highly-sensitive financial data about Americans deserves significant scrutiny under any circumstances."

In his letter to the DOJ, House Antitrust Subcommittee Chairman David N. Cicilline (RI-01), argued the deal "bears all the traditional signs of a dominant incumbent seeking to tame a maverick competitor," and that antitrust law requires Intuit/TurboTax to "compete on the merits rather than be permitted to purchase its way out of competing."

Good Chance of DOJ Challenge.

The DOJ has several reasons to be concerned with the merger. First, the merger results in presumptively anticompetitive consolidation. As discussed above, the merger creates a virtual duopoly in the digital tax prep market, which increases the risk of coordination between rivals. In addition, under the formula identified in the DOJ's Horizontal Merger Guidelines, the personal tax preparation market is highly concentrated, and the level of concentration caused by the merger renders it presumptively anticompetitive.

Second, Credit Karma is the prototypical "maverick," i.e., a firm that plays a disruptive role in the market to the benefit of customers. Acquisitions of mavericks by entrenched market dominators are viewed with enhanced skepticism, as demonstrated by the FTC's recent challenge of the Harry's and Edgewell merger [[see our post on the FTC's challenge](#)]. Unlike Intuit, Credit Karma offers most of its users truly free tax prep software. This is presumably why Credit Karma noticed a 50% increase in users from 2018 to 2019. It is also why Intuit likely views Credit Karma as its most significant rival, despite having less than a quarter of H&R Block's market share.

Third, there is DOJ precedent for challenging this merger. The DOJ successfully challenged a similar merger in 2011 between H&R Block and TaxAct. In upholding the challenge, the D.C. district court agreed with the DOJ that the relevant market affected by the merger was the digital do-it-yourself tax preparation market; that the merger would have led to higher prices for tax preparation services; and that the smaller TaxAct was a market disruptor whose presence spurred pro-consumer benefits like free federal filings.

In sum, this appears to be a situation where an entrenched dominant firm is trying to protect its position by acquiring a fast-growing, pro-consumer market disruptor. Based on the two companies'

histories, the likely result of the merger will be higher prices and less innovation for consumers and continued dominance by Intuit. The DOJ must therefore take a very close look at the merger and either challenge it or implement conditions that address these competition issues.

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