

Required task	Managerial		Skilled Technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (10/hr.)	
Recordkeeping .....	0	\$0	100,000	\$2,000,000	900,000	\$9,000,000	\$11,000,000
Open-end credit Disclosures:							
Initial terms .....	25,833	\$1,291,650	232,500	\$4,650,000	0	\$0	\$5,941,650
Rescission notices .....	542	\$27,100	4,875	\$97,500	0	\$0	\$124,600
Change in terms ...	29,583	\$1,479,150	266,250	\$5,325,000	0	\$0	\$6,804,150
Periodic state-ments .....	505,000	\$25,250,000	4,545,000	\$90,900,000	0	\$0	\$116,150,000
Error resolution .....	88,333	\$4,416,650	795,000	\$15,900,000	0	\$0	\$20,316,650
Credit and charge card accounts ...	25,833	\$1,291,650	232,500	\$4,650,000	0	\$0	\$5,941,650
Home equity lines of credit .....	2,583	\$129,150	23,250	\$465,000	0	\$0	\$594,150
Advertising .....	6,833	\$341,650	61,500	\$1,230,000	0	\$0	\$1,571,650
Total open-end credit .....							\$157,444,500
Closed-end credit Disclosures:							
Credit disclosures .....	1,140,000	\$57,000,000	10,260,000	\$205,200,000	0	\$0	\$262,200,000
Rescission notices .....	61,667	\$3,083,350	555,000	\$11,100,000	0	\$0	\$14,183,350
Variable rate mortgages .....	9,750	\$487,500	87,750	\$1,755,000	0	\$0	\$2,242,500
High rate/high fee mortgages .....	5,000	\$250,000	45,000	\$900,000	0	\$0	\$1,150,000
Reverse mortgages .....	2,750	\$137,500	24,750	\$495,000	0	\$0	\$632,500
Advertising .....	14,167	\$708,350	127,500	\$2,550,000	0	\$0	\$3,258,350
Total closed-end credit .....							\$283,666,700
Total Disclosures .....							\$441,111,200
Total Record-keeping and Disclosures .....							\$452,111,200

**William E. Kovacic,**  
General Counsel.

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## FEDERAL TRADE COMMISSION

[Docket No. 9299]

### MSC Software Corp.; 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 the complaint previously issued 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 September 13, 2002.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov), as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Joe Simons, or Richard Dagen, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3667 or (202) 326-2628.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission's rules of practice, 16 CFR 3.25(f), 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 August 14, 2002), on the World Wide Web, at <http://www.ftc.gov/os/2002/08/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

Such comments 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 Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with MSC Software Corporation ("MSC") to resolve matters charged in an Administrative Complaint issued by the Commission on October 9, 2001. The Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by MSC that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

##### *I. The Commission's Complaint*

The Complaint alleged that Respondent MSC Software Corporation ("MSC") unlawfully acquired Universal Analytics, Inc. ("UAI") and Computerized Structural Analysis and Research Corporation ("CSAR") in 1999 in violation of section 7 of the Clayton Act and section 5 of the FTC Act. The Complaint alleged that the acquisitions may substantially lessen competition or lead to a monopoly in the market for advanced versions of Nastran, a public domain engineering simulation software program. Neither acquisition had been reportable under the Hart-Scott-Rodino reporting thresholds, 15 U.S.C. 18a.

MSC is the largest supplier of computer-aided engineering simulation software in the world. In 2001, its annual worldwide revenue was \$236 million. MSC has an estimated 1350 employees located around the world. MSC has grown substantially through acquisitions, having acquired six other engineering software vendors or resellers since 1998. MSC is a publicly-traded company.

The Complaint alleged that MSC, UAI, and CSAR had long been vigorous competitors, each offering an advanced version of Nastran to customers in the aerospace, automotive and other industries. These competing versions of advanced Nastran all derived from a program originally developed by NASA and placed into the public domain. The common origin of these three advanced Nastran versions made switching between them relatively easy. For these reasons, UAI Nastran and CSAR Nastran were close substitutes for MSC Nastran.

Non-Nastran solvers, however, were more distant substitutes. The Complaint alleged that competition among the three advanced Nastran suppliers helped to hold down prices and to promote product innovation.

The Complaint further alleged that MSC was the dominant supplier of advanced versions of Nastran, with an estimated 90 percent of worldwide Nastran revenue. Prior to MSC's acquisitions, UAI and CSAR were the only other firms offering advanced versions of Nastran. They held substantially smaller market shares. Each had about five percent of worldwide advanced Nastran revenues.

The Complaint alleged that the acquisitions were anticompetitive because they increased the level of concentration in already highly concentrated markets. The Complaint further charged that the acquisitions eliminated competition on price and product development and enhancements, created or enhanced MSC's power to raise prices above a competitive level or to withhold or delay product development and enhancements, and prevented the increased competition that MSC expected if other suppliers of engineering software were to acquire UAI and CSAR. Even if other solvers offering advanced analysis capabilities were included in the market, the markets remain highly concentrated and the acquisitions anticompetitive. The Complaint also alleged that MSC's acquisitions were unlawful in separate markets that exist for specific industries or customer categories. According to the Complaint, the appropriate geographic market in which to analyze MSC's acquisitions is the world, although a U.S. market may also exist.

The Complaint also alleged that MSC's acquisitions constitute unlawful monopolization and an attempt to monopolize in violation of section 5 of the FTC Act. It further alleged that MSC's dominant market share prior to and after the acquisitions satisfied the showing required for monopoly power and dangerous probability of success. Moreover, the Complaint alleged that MSC acted willfully and with the specific intent to obtain and maintain a monopoly in the market for advanced versions of advanced Nastran when it made the acquisitions.

The Complaint further charged that entry is not likely, nor, if it did occur, would it likely be timely or sufficient to prevent the anticompetitive effects of the acquisitions.

##### *II. Terms of the Proposed Consent Order*

The proposed Order would provide relief for the alleged anticompetitive effects of the acquisitions principally by means of a divestiture intended to restore competition. In addition, the proposed Order contains further provisions intended to facilitate the restoration of competition.

*Divestiture.* The principal relief under the proposed Order is to require the Respondent to divest, within 150 days after entry of the Order and up to two acquirers to be approved by the Commission, perpetual, worldwide, royalty-free, and non-exclusive licenses to the key intellectual property needed by a new competitor to compete in the sale and licensing of advanced Nastran software. ¶ II.A. The licensed intellectual property rights would consist of the version of MSC Nastran that is most current as of the date that the Consent Agreement is accepted for public comment by the Commission, as well as all the intellectual property rights acquired by MSC in the two challenged acquisitions. ¶ I.L.1

The licenses would permit the acquirer (or acquirers) to use the licensed rights to sell advanced Nastran software, sublicense others without restriction, and prepare derivative works so as to further develop and enhance the software without further remuneration to MSC once the divestiture is completed. The licenses granted would be non-exclusive, meaning that MSC would continue to retain full rights itself to the licensed intellectual property. ¶ II.A. The basic approach reflected in the settlement, therefore, is to replicate in the hands of the acquirer(s) the crucial intellectual property held by MSC in the aftermath of the challenged acquisitions.

The Order language providing for divestiture "up to two" acquirers tracks the language of the Notice of Contemplated Relief accompanying the Complaint. It reflects MSC's removal of two independent competitors from the marketplace through the challenged acquisitions. The language is intended to leave open to the Commission the option of requiring that two competitors be re-established.

*Purpose.* Paragraph II.C. of the proposed Order contains a recitation of the Commission's purpose in ordering the divestiture. That provision recites that the purpose of the divestiture is to remedy the lessening of competition alleged in the complaint by establishing one or more viable and effective competitors to MSC engaged in the sale, distribution and licensing of advanced Nastran software for use by customers,

including customer sin the aerospace and automotive industries, and with the ability to engage in further development and enhancement of advanced Nastran software. It states that, in determining whether the licensing of more than one acquirer may be required, or whether to approve the grant of a license to a particular prospective acquirer, the Commission will consider, among other things, the likely future capability of the prospective acquirer or acquirers to provide effective price and innovation competition to MSC. It also recites that the Commission will consider as well, among other things, any provisions for the hiring by the acquirer(s) of personnel knowledgeable concerning the design, development, maintenance, customer support, sales and marketing of the licensed rights.

*The Software To Be Licensed.* The intellectual property to be licensed includes all rights relating to the version of MSC.Nastran that is most current as of the date the consent agreement is accepted by the Commission for public comment. ¶ I.L.1.a. Divestiture of rights to MSC's current version of MSC Nastran is a necessary remedial measure to facilitate the re-establishment of the competition that MSC allegedly eliminated with its two acquisitions. Such divestiture addresses the switching of former UAI and CSAR customers to MSC's own version of advanced Nastran, including former UAI and CSAR customers who may have adapted their prior procedures and customer-written software routines to the MSC version. In addition, such divestiture addresses the fact that MSC has incorporated new features in its releases of MSC.Nastran, including features taken from the CSAR and UAI versions acquired in 1999, and has not carried on any further development of the UAI and CSAR versions of Nastran following the acquisitions. Divestiture of the acquired assets alone would not restore the competitive conditions that existed before the acquisitions (the *status quo ante*), because the 3-year old UAI and CSAR codes are no longer as commercially viable as they were when MSC acquired them. Licensing of the current version of MSC.Nastran is required to give the acquirer or acquirers what UAI and CSAR formerly had: An up-to-date product upon which to base sales and future development efforts.

In addition to the current version of MSC.Nastran, MSC is also required to license to the acquirer(s) all of the intellectual property acquired in the UAI and CSAR acquisitions. ¶ I.L.1.b. and -c. This relief is integral to the fundamental approach reflected in the

settlement, which is to replicate in the hands of the acquirer(s) the intellectual property held by MSC in the aftermath of the challenged acquisitions. Licensing all the UAI and CSAR computer codes (in addition to MSC.Nastran) is justified to permit an acquirer(s) to offer all the computer codes formerly available from UAI and CSAR, including the ability to select aspects of the UAI Nastran and CSAR Nastran codes for possible inclusion in its future advanced Nastran product that have not been incorporated in MSC.Nastran since the acquisitions.

The Order details a broad range of intellectual property rights to be licensed to the acquirer(s). See ¶ I.L.2. In addition to the licensed intellectual property and physical or electronic copies embodying the intellectual property, MSC is also required to divest copies of other materials useful to an acquirer in establishing itself as a competitor to MSC. These include all of the customer files acquired by MSC as a result of the challenged acquisitions, as well as all marking information, sales training materials, and current (as of the divestiture date) customer lists, customer contact information, and customer support log database contents relating to customers who use MSC.Nastran in the United States. ¶ I.E.2. The latter information should be of particular use by an acquirer that may wish to differentiate itself from MSC by its responsiveness to customer needs. In the past, both UAI and CSAR used such tactics to compete against MSC.

*Post-Divestiture Rights.* In addition to the licensed rights describe above, the Order provides for further rights by the acquirer(s) in the post-divestiture period:

For twelve months after the divestiture date, the acquirer has the right to obtain from MSC ongoing support with respect to MSC.Nastran, in the form of personnel, information, technical assistance, advice and training. This includes reasonable consultation with knowledgeable employees of MSC to ensure that the acquirer's personnel can maintain, develop and support the Licensed Rights in a manner comparable to MSC. This continuing support does not extend to the licensed UAI and CSAR intellectual property, and will be provided at MSC's direct cost. ¶ I.K.4. This continuing support obligation complements the hiring opportunities afforded to the acquirer under other provisions of the Order discussed below.

For not less than three years after the divestiture date, the acquirer has the right to use the trademarks or trade

names of the licensed software for the purpose of identifying the acquirer as a licensee from MSC. The acquirer does not otherwise obtain any rights of any kind to the name "MSC" or "MSC.Nastran" or related logos and trademarks of MSC. ¶ I.K.4.

*Hiring of MSC Personnel.* In order to ensure the ability of the acquirer to provide effective competition, the Order contains procedures to facilitate the acquirer's hiring of valuable MSC personnel. ¶ V. In the aftermath of the acquisitions, MSC was essentially the only employer of computer programmers with thorough knowledge of the proprietary versions of advanced Nastran. The future success of the acquirer in providing ongoing innovation competition in developing advanced Nastran may depend to a significant degree on its hiring of personnel (particularly programmers and customer support engineers) with knowledge of this large and complex body of computer code.

*Customer Contracts.* Prior to the acquisitions, most of MSC's advanced Nastran customer purchased the software on an annual lease basis—that is, for one-year terms with annual payments and in quantities determined according to annual needs. In the aftermath of the acquisitions, and especially in the 2001–2002 period, many customers converted annual leases for advanced Nastran to "paid-up" licenses—that is, licenses to use the software for an extended term, generally 25 years, for a larger advance payment and continuing maintenance fees during the contract term. This conversion may disadvantage future advanced Nastran competitors who may no longer have access to these customers at competitive prices.

To address the effect of these conversions on the acquirer's ability to attract a customer base, the proposed Order provides that, for a period of one year after the divestiture date, any customer who was converted from an annual lease to a paid-up license for MSC.Nastran in the period since the acquisitions has the right to terminate or rescind its license in whole or in part in order to deal with the acquirer. If a customer chooses to do so, MSC is required to refund or return a pro rata portion of the consideration paid in advance for its paid-up MSC.Nastran license. ¶ VII.A. The Order also provides that MSC is to provide affected customers with written notice of such rights within fourteen days following the divestiture date. ¶ VII.B.

The formula for such refunds bases the pro-rata allocation on the lesser of four years or the contract term. ¶ VII.A.

This refund formula should provide substantial incentive for affected customers to consider switching to the acquirer in whole or in part. Under this formula, customers who converted to a paid-up license since mid-year 2001 and who determine to switch to the acquirer at mid-year 2003 will be entitled to a refund of one-half or more of their advance payment for the paid-up MSC.Nastran license.

Although these provisions authorize refund payments by MSC to some customers, they are neither a penalty nor disgorgement. Their purpose is not to punish MSC or deprive it of ill-gotten gains. Rather, the provisions are in furtherance of the principal divestiture relief provided under the Order. They are intended to remove any penalty or disincentive on customers who had no alternative to MSC's terms after 1999, but who might now consider doing business with the acquirer of the divested assets. Indeed, no payment will be due from MSC to a customer unless and until the customer chooses to do business with the acquirer.

*Post Divestiture Conduct.* The Order includes provisions intended to prevent MSC from disadvantaging the acquirer in its post-divestiture dealings with customers or suppliers.

Advanced Nastran software is used in conjunction with other complementary software. Complementary software includes programs known as "pre- and post-processors" or "meshers" that are used to process input to or output from advanced Nastran and make it useful with other computer data, such as designs produced by CAD software. Complementary software of this sort is produced by various suppliers and by MSC itself. The Order requires MSC, for three years after the divestiture date, to maintain the interoperability of the current and any future versions of MSC's complementary software (including but not limited to its product MSC.Patran) with the licensed software (§ VII.A); and prohibits MSC from influencing a supplier of complementary software or services to refuse to deal with the acquirer or stop supporting interoperability with any of the licensed software (§ VIII.B.).

During the same three-year period, MSC is required to maintain all current input and output file formats for MSC.Nastran. This is to ensure that users of MSC.Nastran would not be impeded or penalized in their use of models, files, or complementary software if they switched to the version of advanced Nastran offered by the acquirer. § VII.C. The Order also requires that MSC not refuse to deal with any customer or prospective

customer for the reason, in whole or in part, that such customer or prospective customer deals with the acquirer.

§ VIII.D. The latter provision is intended to prevent MSC from inhibiting the pre-acquisition practice of many customers to maintain simultaneous licenses for more than one source of advanced Nastran software.

*Prior Notice of Future Acquisitions.*

For a period of ten years, the Order requires MSC to provide prior notice of future acquisitions of any entity engaged in the development or sales of any version of Nastran. § IX. This provision is warranted under existing Commission policy because of the risk that MSC may in the future carry out anticompetitive acquisitions that otherwise would not come to the attention of the Commission because the transactions are likely to fall below the Hart-Scott-Rodino reporting thresholds. See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions (June 21, 1995).

*Monitor, Trustee and Reporting.* The proposed Order contains standard monitor and trustee provisions. The Monitor provisions, set out in Paragraph III, authorize appointment of a person to oversee MSC's compliance with the terms of the Order. Such a monitor is warranted in light of the technical nature of the products at issue and the potential complexity of some compliance issues, including employee hiring and customer refunds. The trustee provisions, set out in Paragraph IV, contemplate appointment of a trustee to complete the required divestiture if MSC does not do so within the 150 days specified in the Order. Under these provisions, the Commission will appoint a trustee who will undertake to accomplish the required divestiture at no minimum price. The trustee will have one year to complete the divestiture. Finally, the proposed Order contains provisions for MSC to file regular reports concerning its compliance with the Order terms. § X.

*III. Opportunity for Public Comment*

The Proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the Complaint will be resolved. The

purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order. It is not intended to constitute an official interpretation of the Agreement and Proposed Order or to modify their terms in any way.

By direction of the Commission.

**Benjamin I. Berman,**  
*Acting Secretary.*

**Statement of Commissioner Mozelle W. Thompson**

The Commission today accepted a consent agreement to resolve the Commission's administrative complaint against MSC.Software. I voted to accept the agreement; however, I am concerned that industry and the private bar do not mistakenly make too much of the fact that the Commission did not require an up-front buyer for this licensing divestiture.

As a general rule, the Commission is more likely to require that parties present up-front buyers for assets when divesting less than an ongoing business. In this unique case, however, the Commission decided to resolve its concerns about MSC.Software's two consummated acquisitions by accepting an order requiring a prompt divestiture to restore lost competition, instead of potentially delaying relief further by first forcing MSC.Software to negotiate an asset sale to a potential buyer. The Commission makes such remedial assessments on a case-by-case basis, and such assessments would likely vary between relief proscribed for consummated mergers and relief for mergers prior to their consummation under Hart-Scott-Rodino reviews—the vast majority of Commission merger work. I am comfortable with the remedial action in this particular instance because the Commission has fully vetted the divestiture package's market acceptability with industry incumbents. Thus, I am fully confident that the asset package will function successfully in the marketplace and facilitate viable competition.

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**GENERAL SERVICES  
ADMINISTRATION**

**Notice of Availability; Environmental Assessment and Finding of No Significant Impact for the Proposed Master Development Plan for the U.S. Consumer Product Safety Commission, Gaithersburg, MD**

**AGENCY:** Office of Portfolio Management, General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The General Services Administration is publishing a Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Proposed Master