



November 5, 2014

Chairwoman Edith Ramirez
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Ramirez:

We urge the FTC to review its decision of September 24, 2014, providing “early termination” of the “Big Data” acquisition by Alliance Data Systems of Conversant (formerly ValueClick).¹ We are deeply concerned that the commission failed to examine sufficiently the consequences to competition—and to privacy—of the consolidation of two powerful sets of consumer data. This merger reflects the continuing consolidation of the consumer data marketplace, an issue that the FTC must address. The Alliance/Conversant deal also raises serious privacy concerns, including with its intended goal of further unleashing powerful tracking technologies that follow individuals across all of their devices and applications. Both companies’ play leading roles providing data for financial services targeting, and Conversant is at the forefront of online lead-generation practices. The commission’s approval of this transaction without appropriate safeguards directly undermines its role as the country’s chief privacy regulator. The FTC cannot, on the one hand, express concern about the discriminatory and privacy implications of “Big Data” and the invisible role of databrokers, but at the same time silently consent to expanded commercial surveillance of the American people.

In addition, since both Alliance Data Systems (via its Epsilon division) and Conversant are members of the U.S. “Safe Harbor” system designed to protect EU citizens’ data, the FTC should have specifically investigated the impact of this deal on the privacy promises made under that framework. EU citizens, as well as U.S. consumers, deserve to know what the FTC believes are the actual merits of the companies’ misleading claims that they provide “privacy protection” using what they describe as “anonymous” data.² As the commission knows, online companies try to avoid scrutiny of their actual data gathering practices by using disingenuous arguments that they are not really tracking actual people—which they are.

Alliance Data Systems, through its Epsilon subsidiary alone, claims it holds “the industry’s most comprehensive suite of targeted and data-driven marketing services.” Its data is used for “private label and co-brand retail credit card programs and other data-driven marketing solutions,” including Visa, MasterCard, and Discover.³ Among its clients are P&G, AstraZeneca, Hilton, Bank of America, General Motors, FedEx, Kraft, Pottery Barn, and others.

Conversant says it has “the industry’s richest consumer profiles ... assembled from vast amounts of diverse marketing information including first-party data provided by our marketers along with Conversant-exclusive behavioral, demographic, purchase, and ad interaction data.” “The resulting user profiles generate a complete and ongoing picture of each consumer,” it explains. “We leverage vast amounts of exclusive browsing, shopping, interaction, and purchase data that powers superior audience modeling, targeting accuracy and campaign optimization.” Its 2014 10-K Annual Report highlights what it calls its “Exclusive Data Sources [that] Enable Precise User Identification,” and its “Seamless Ability to Reach Individual Consumers Across Channels and Devices.” Conversant notes that its “proprietary data and first-party data relationships create superior identification of individual consumers, even as they increasingly use multiple devices ... [O]ur CRM user profiles are maintained for running periods of up to 400 days and are dynamically updated as consumers interact in both online and offline channels Our clients can reach users across their devices in the ad formats and sequence that is proven to be most effective for a particular individual.”⁴ Conversant also operates “the world’s largest” affiliate marketing program, enabling it to gather data from “100 million transactions” alone.⁵ Conversant’s clients include Mondelez, Citi, Capital One, Microsoft, GSK, Coca-Cola, McDonald’s, US Cellular, and others.⁶

Among the many factors that required a more in-depth examination of the proposed transaction are the following:

- Integration of competing datasets: As the “Strategic Rationale” for the merger explained, it is premised on creating a “one-stop, cross-device data fueled marketing powerhouse.” It consolidates offline and online data, transactional information, database and loyalty programs, and more. In announcing the deal, the companies told investors that the merger combines Alliance Data/Epsilon’s client base representing the “Top 10 Auto, Top 10 Pharma, 8 out of 10 Retailers” as well as “Top Banks,” with Conversant’s client base of “7 out of Top 10 auto, 8/10 Pharma, 70/100 Retail, and 3/4 Telco.”⁷ Alliance already has data on hundreds of millions of consumers, including “transactional data powered by over 1,600 participants providing 8.6 billion transactions from the Abacus Cooperative.” Conversant’s database of 263 million people incorporates “virtually any type of offline and online data and ... proprietary shopper insights to create millions of the richest, most actionable profiles on earth—all continuously updated in real-time as new data becomes available ... [w]ith insight into every person’s lifestyle, needs, motivations and future purchases”⁸ Data from Conversant will be used to “enrich Epsilon’s existing offline and online data set, allowing for more effective targeting marketing”⁹ In its “strategic rationale,” Alliance Data explained that its already significant “first-party and third-party, online and offline, transactional to demographic/psychographic, and structured to unstructured data” would add such additional data from Conversant as “cross-device (desktop, tablet, mobile) and cross-channel” (mobile, social, video).

- Expansion of data-tracking capacity: The deal, in the words of Alliance Data’s CEO, “bulks up” the company’s digital marketing apparatus, proving “scale” across “display, mobile, video and social digital channels” as well as to its Epsilon service. Epsilon datasets include Abacus Cooperative Transactional Data (“analyzing billions of consumer and business transactions”); Target Source Survey Data (“information from tens of millions of consumers”); TotalSourcePlus Consumer Data (“the most comprehensive, accurate and predictive compiled consumer data source available”); and Epsilon’s “AgilityHarmony” service (“powerful data segmentation tools . . . deliver[ing] highly personalized messages to customers using your most effective channels: email, mobile, social, online and offline”).¹⁰ Conversant’s “proprietary identification network and first-party data relationships allow for extraordinary user level match rates. Our user identification engine is fueled with data from 20 billion ad auctions per day, 6,000+ publisher integrations, more than 20,000 mobile app SDK integrations and login matching across hundreds of leading advertisers Using these and other data points, we’re uniquely able to associate all of a user’s devices — PCs, tablets and smartphones—with a single ID.”¹¹ Holding the “#1 position in affiliate marketing,” Conversant “serves as an intermediary between more than 60,000 publishers (i.e., websites or mobile applications) and 3,000 advertisers, such as retail, travel or financial services companies.”¹² Both companies continue to expand their financial data gathering practices, including mobile and retail consumer data via apps.¹³ Conversant is a leader in online lead generation and affiliate marketing, through its “CJ” division (formerly called Commission Junction). As the commission’s own ongoing work involving online lead generation illustrates, there is a tremendous amount of data collected from individuals who are then targeted, largely without meaningful awareness or consent, for a range of services—including for financial products.¹⁴
- Advances in cross-platform tracking of consumers: The deal will “complete” Alliance Data’s “end-to-end marketing capabilities,” including using “cross-screen” targeting via Conversant’s “Common ID” apparatus.¹⁵ As the merger announcement explained, “Common ID identifies an individual consumer across multiple devices.”¹⁶ Conversant is said to deliver “exact matches since it gets purchase data from retail clients” (“Billions of dollars in actual purchase data,” according to Conversant’s site).” Each of its “263 million records with 200 attributes per individual” has, explained an industry analyst, “five IDs coming from different browsers, devices or cookies.” This enables Conversant to make “hard matches on cross-device,” using its Big Data capabilities.¹⁷

The failure of the commission to address key consumer protection issues with this acquisition underscores the need for a greater commitment by the FTC to tackle the competition and privacy issues of today’s data-driven digital marketing era. We specifically urge the commission to launch a formal review of “Big Data” consolidation. The level of commercial data gathering on Americans is unprecedented, growing daily without respite, and is ending up in the hands of fewer companies. The first half of 2014, according to a recent survey, generated 209 digital-data-related M &A deals, a “record

period” and a significant increase from the previous year. Driving these transactions, explained a Results International report, is “the battle for data.” Access to data to improve targeting and to understand the consumer journey better has generated substantial deal activity, it explained. There have been mergers involving data management platforms, marketing analytics, online video, and social and mobile data marketing.¹⁸

In addition, this transaction illustrates the dramatic and unfettered growth of so-called “cookie-less” cross-screen/device-tracking. Facebook, Google, Conversant, and others have developed data tracking technologies and techniques to supplement and supplant their “cookie”-based tracking. The goal is to use a single identifier to track and target individuals regardless of what device they use, such as mobile phones. For example, Experian now offers an “OmniView Identity-Linkage Engine” that provides a persistent “single customer view by establishing identification keys for consumers at an individual, household, and address level that serve as a common denominator between all data sources.” Facebook is partnering with advertising giant Omnicom in its new Atlas division cross-device tracking system. Illustrating the many data-sharing relationships that have recently emerged, Omnicom—which has its own data holdings via its Annalect division—is using data broker Neustar for its work with Facebook/Atlas. Neustar has its own vast set of informational profiles on Americans, including their financial behaviors and mobile device use, deploying what it calls its “real time consumer insight engine.”¹⁹ The commission should not wait until American privacy is further undermined through the dramatic growth of these new “cookie-less” commercial tracking practices. Action is required now.²⁰

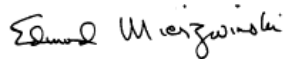
Finally, given that Conversant/ValueClick was fined a “record \$2.9 million” by the commission in 2008, including for “advertising claims and e-mails” that were “deceptive” and “misrepresented that they secured customers’ sensitive financial information,” we believe that a more robust and public review is necessary.²¹

We urge the commission to reopen its inquiry on this acquisition to address competition concerns and, through its Consumer Protection Division, propose meaningful privacy safeguards. It must also publicly review the deal to ensure that its Safe Harbor enforcement commitments to the European Union are meaningful. The public deserves no less from the FTC.

Sincerely,



Jeff Chester
Executive Director
Center for Digital Democracy



Edward Mierzewski
Director
U.S. PIRG Education Fund

cc: Commissioner Julie Brill
Commissioner Maureen K. Ohlhausen
Commissioner Joshua D. Wright
Commissioner Terrell McSweeney

¹ Federal Trade Commission, “Early Termination Notice 20141572: Alliance Data Systems Corporation; Conversant, Inc.” 24 Sept. 2014, <http://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20141572>; Ryan Joe, “ValueClick Becomes 'Conversant,' Seeks To Align Tech Assets,” *Ad Exchanger*, 3 Feb. 2014, <http://www.adexchanger.com/ad-networks/valueclick-becomes-conversant-seeks-to-align-tech-assets/> (both viewed 31 Oct. 2014).

² Conversant, “Conversant Privacy Policy,” 23 Oct. 2014, http://www.conversantmedia.com/legal/privacy#SAFE_HARBOR; Conversant, Safe Harbor Organization Information, expires 5/13/15, <http://safeharbor.export.gov/companyinfo.aspx?id=23788>; Epsilon Data Management, Safe Harbor Organization Information, expires 2/8/15, <http://safeharbor.export.gov/companyinfo.aspx?id=21512>. Conversant recently expanded its data tracking in the EU, rolling out “Europe’s first integrated marketing personalisation platform, which will help brands connect with people as individuals at major scale, cross-device and in real-time.” “ValueClick Europe Rebrands, Launches Europe’s First Integrated Marketing Personalisation Platform as Conversant,” 7 Sept. 2014, <http://www.businesswire.com/news/home/20140907005015/en/ValueClick-Europe-Rebrands-Launches-Europe%E2%80%99s-Integrated-Marketing#.VFKT6OdfWgM>; Conversant, “Global Affiliate Network. Local Expertise.” <http://www.cj.com/advertiser/advertiser-global-landing-page>. For example, Conversant says that its “new media and affiliate solutions are fuelled by a state-of-the-art proprietary technology stack that helps marketers reach the right individuals at the right time, with the right message. All of this is achieved while delivering industry leading consumer privacy protection.” “ValueClick Europe Rebrands, Launches Europe’s First Integrated Marketing Personalisation Platform as Conversant.”

³ Its 2014 10K Annual report notes that “We capture and analyze data created during each customer interaction, leveraging the insight derived from that data to enable clients to identify and acquire new customers and to enhance customer loyalty.” Alliance Data, “SEC Filings,” <http://phx.corporate-ir.net/phoenix.zhtml?c=120991&p=irol-sec>. In a radio interview, Alliance Data’s CEO explained why the company was acquiring Conversant, explaining that “... these folks have been around for quite some time, their predecessor company was known as ValueClick, and what they do, sort of their mousetrap, they could go to a retailer and say ‘ok, give me all of your purchase transactional, transactions that have been made, so that when Dave went into that store and bought these items, give me that information,’ and what they do with that information is say ‘ok, this person looks like he only buys when there is a 10 percent sale and he's only interested in tools and so I'm not going to waste my time trying to market for other things’ and what Conversant will do is take that, what they call first-party data and then match that up against what's called a cookie or some ID so that when you are moving around the Internet, regardless of the Website you're on, when you go to, when you actually show up to a Website, all those ads that you see pop up are going to be customized, so that you're just going to get an ad that says, you know ‘hey David, you know, your friends at so-and-so hardware store, here's an extra offer for 15 percent off,’ so it's data-driven digital targeted marketing, which is a mouthful ... Things are changing so fast, it's getting so complicated that we want to go into a client and basically say, you know, ‘look your job is not to worry about all this stuff. Your job is to sell product. Let us help with your marketing strategy and we will bring together all the information that you need, call it big data or whatever about your customer base, and then we'll also help figure out whether you should reach out to them through a mobile device, a tablet device, the desktop, you know, social or direct mail or something like that.’ The idea is a sort of a one-stop shop and that's

something that is fairly unique in the marketplace.” Alliance Data Systems, “Ed Heffernan Featured on CEO Spotlight,” http://www.sec.gov/Archives/edgar/data/1080034/000110121514000246/form_425.htm. See also Kate Kaye, “Epsilon CEO: Buying Conversant Will Help Connect Cross-Channel Dots,” *Ad Age*, 16 Sept. 2014, <http://adage.com/article/datadriven-marketing/epsilon-ceo-conversant-buy-boost-cross-channel-chops/294957/> (all viewed 31 Oct. 2014).

⁴ Conversant, “Superior User Identification and Targeted Advertising Delivery Across Channels and Devices,” <http://www.conversantmedia.com/solutions/enterprise-solutions/tailored-delivery/>; Conversant, “The Industry’s Richest Consumer Profiles Powered by Your Brand Data,” <http://www.conversantmedia.com/solutions/enterprise-solutions/brand-profiles> (both viewed 31 Oct. 2014).

⁵ Conversant, “Form 10-K,” United States Securities and Exchange Commission, 2013, <http://ir.conversantmedia.com/secfiling.cfm?filingID=1080034-14-14&CIK=1080034>. Earlier this month Conversant announced that it was using its “sophisticated targeting options” to deliver “rich individual-level audience insights” for online video advertising. “Conversant Launches A New Standard Of Breakthrough Video Solutions To Address Major Industry Needs,” 2 Oct. 2014, <http://ir.conversantmedia.com/releasedetail.cfm?ReleaseID=874304> (both viewed 31 Oct. 2014).

⁶ Conversant, “Clients,” <http://conversant.com/clients/#.VFOnN4dfWgM> (viewed 31 Oct. 2014).

⁷ “Alliance Data to Acquire Conversant,” 11 Sept. 2014, <http://www.sec.gov/Archives/edgar/data/1080034/000110121514000229/f425.htm> (viewed 31 Oct. 2014).

⁸ It claims it holds “300 million anonymized profiles” that is connected to an “analysis of more than \$4 billion worth of transactions monthly.” “Conversant Launches A New Standard Of Breakthrough Video Solutions To Address Major Industry Needs.” See also Epsilon, “Data Services,” <http://www.epsilon.com/marketing-services/data-services>

⁹ Conversant, “Enterprise Solutions: Activate Your Data to Create Ongoing 1:1 Marketing Relationships,” <http://www.conversantmedia.com/solutions/enterprise-solutions/>; Conversant, “Media Solutions: Supercharge Campaigns with Individualized Cross-Device Media,” <http://www.conversantmedia.com/solutions/media-solutions/>; Epsilon AgilityLoyalty, “Technology: Data,” <http://www.agilityloyalty.com/technology/data/>; “ExchangeWire European Weekly Round-Up: Alliance Data,” ExchangeWire, 19 Sept. 2014, <http://www.exchangewire.com/blog/2014/09/19/exchangewire-european-weekly-round-up-31/> (all viewed 31 Oct. 2014).

¹⁰ Epsilon, “Abacus Cooperative Transactional Data,” <http://www.epsilon.com/what-we-do/marketing-data/abacus-cooperative-and-transactional-data/>; Epsilon, “TargetSource Survey Data,” <http://www.epsilon.com/what-we-do/marketing-data/targetsource-survey-data/>; Epsilon, “TotalSource Plus Consumer Data,” <http://www.epsilon.com/what-we-do/marketing-data/totalsource-consumer-data/>; Epsilon, “Digital Messaging: Email, Mobile & Social,” <http://www.epsilon.com/what-we-do/marketing-technology/digital-email-messaging/>; Epsilon AgilityHarmony, “Actionable Data,” <http://www.agilityharmony.com/actionable-data/>; Epsilon TotalSource Plus Online, for example, uses “financial, demographic, lifestyle, trigger and market indicators” as part of its targeting system. Epsilon, “Epsilon: Online Solutions,” personal copy.

¹¹ Conversant, “The Industry’s Richest Consumer Profiles Powered by Your Brand Data”; Conversant, “Superior User Identification and Targeted Advertising Delivery Across Channels and Devices.”

¹² “Alliance Data to Acquire Ad Tech Leader Conversant For Approximately \$2.3 Billion,” 11 Sept. 2014, <http://ir.conversantmedia.com/releasedetail.cfm?releaseid=870463>. Conversant itself has acquired other major data targeting firms, such as Dotomi and Greystripe. Conversant, “Dotomi is now Conversant,” <http://www.conversantmedia.com/dotomi/> (viewed 31 Oct. 2014).

¹³ “Photo Release—Alliance Data Retail Services' Enhanced Mobile Loyalty Suite Delivers Industry-Leading App and Payment Functionality for Retailers and Credit Cardmembers,” MarketWatch, 30 Oct. 2014, <http://www.marketwatch.com/story/photo-release---alliance-data-retail-services-enhanced-mobile-loyalty-suite-delivers-industry-leading-app-and-payment-functionality-for-retailers-and-credit-cardmembers-2014-10-30> (viewed 31 Oct. 2014); “Conversant Launches A New Standard Of Breakthrough Video Solutions To Address Major Industry Needs.”

¹⁴ Conversant, “Lead Generation,” <http://www.conversantmedia.com/solutions/cj-affiliate-solutions/more-ways-grow/lead-generation>; Conversant, “Advertiser Verticals,” <http://www.se.cj.com/why-cj#advertiserverticals>; Conversant, “What is Affiliate Marketing?” <http://www.se.cj.com/what-is-affiliate-marketing>; “CJ Affiliate by Conversant Unveils ‘Affiliate Customer Insights’ at CJ University in Santa Barbara,” 10 Sept. 2014, <http://ir.conversantmedia.com/releasedetail.cfm?releaseid=870217> (all viewed 31 Oct. 2014).

¹⁵ “ExchangeWire European Weekly Round-Up: Alliance Data”; James Nichols, “Understand the Cross-device Consumer in Just 15 Minutes,” SlideShare, 17 Aug. 2014, <http://www.slideshare.net/Oreillynsf/understand-the-crossdevice-consumer-in-just-15-minutes-38058279>; Conversant, “It's the Person, Not the Device,” <http://go.conversantmedia.com/person-not-device.html>. Conversant gives awards to its affiliate marketing clients, which include Citi, H&R Block, CreditCards.com, Credit Karma, and others. Conversant, “CJ Affiliate Announces Finalists for 2014 CJYou Awards,” 9 Sept. 2014, <http://ir.conversantmedia.com/releasedetail.cfm?releaseid=869930> (all viewed 31 Oct. 2014).

¹⁶ “Alliance Data to Acquire Conversant.”

¹⁷ Ryan Joe, “For Old-School Epsilon, Conversant Buy Will Bring Tech And New Channels,” Ad Exchanger, 12 Sept. 2014, <http://www.adexchanger.com/platforms/digging-into-the-risks-and-rewards-of-the-conversant-epsilon-alliance/> (viewed 31 Oct. 2014).

¹⁸ The report further explains that “Particularly hot themes have included the role of offline data in closing the loop for in-store purchases, omni-channel attribution as a means of better understanding customer journeys and various applications of big data, whether across mobile, search or social. We have also seen both advertisers and publishers thinking more strategically about the value of their first party data, and how that should be leveraged (and protected) as the eco-system evolves.” “Global Advertising and Marketing Technology: M&A and Fundraising Activity and Trends,” Sept. 2014, personal copy. See also CDD handout on this issue given to the FTC earlier this year: “CDD, Allies, Tell FTC It Must Do Better Job Addressing Mergers Related to Databroker Companies,” 28 July 2014, <http://www.democraticmedia.org/cdd-allies-tell-ftc-it-must-do-better-job-addressing-mergers-related-databroker-companies>; “AdTech and MarTech Markets to See Doubling of M&A Activity in 2014—Report,” Results International, 18 Sept. 2013, <http://www.resultsig.com/press-centre/press-releases/adtech-and-martech-markets-to-see-doubling-of-ma-activity-in-2014-report/>. See, for example, MediaMath and Tactads: MediaMath, Safe Harbor Organization Information, expires 5/14/15, <http://safeharbor.export.gov/companyinfo.aspx?id=23428>; “Press Release: MediaMath Acquires Tactads to Enable Cookieless, Cross-Device Targeting and Measurement,” 24 Apr. 2014, <http://www.mediamath.com/news/press-release-mediamaath-acquires-tactads-to-enable->

cookieless-cross-device-targeting-and-measurement/ (all viewed 31 Oct. 2014). Tactads provides “cookieless” targeting and cross-device targeting. Companies enrolled in the U.S./EU Safe Harbor also made acquisitions in Europe during that period.

¹⁹ “The Move To Cross Screen IDs And Its Potential Fall Out,” ExchangeWire, 1 Oct, 2014, <http://www.exchangewire.com/blog/2014/10/01/the-move-to-cross-screen-ids-and-its-potential-fall-out/>; Neustar, “Neustar AdAdvisor Audiences Reference Guide,” <http://www.neustar.biz/resources/product-literature/adadvisor-audiences-reference-guide>; “Neustar Partners with Mobile Media Leaders to Improve Marketers' Reach Across more Channels and Devices,” 23 Sept. 2014, <http://www.neustar.biz/about-us/news-room/press-releases/2014/neustar-partners-with-mobile-media-leaders-to-improve-marketers-reach-across-more-channels-and-devices>; “Omnicom Partners with Atlas for Launch During 11th Annual Advertising Week,” PR Newswire, 29 Sept. 2014, <http://www.prnewswire.com/news-releases/omnicom-partners-with-atlas-for-launch-during-11th-annual-advertising-week-277397011.html>; Annalect, “Cognition Marketing Platform,” <http://www.annalect.com/products/> (all viewed 31 Oct. 2014).

²⁰ “Experian Marketing Services Launches OmniView Identity-Linkage Engine,” Destination CRM, 24 Sept. 2014, <http://www.destinationcrm.com/Articles/CRM-News/CRM-Across-the-Wire/Experian-Marketing-Services-Launches-OmniView-Identity-Linkage-Engine-99517.aspx> (viewed 31 Oct. 2014).

²¹ Federal Trade Commission, “ValueClick to Pay \$2.9 Million to Settle FTC Charges,” 17 Mar. 2008, <http://www.ftc.gov/news-events/press-releases/2008/03/valueclick-pay-29-million-settle-ftc-charges> (viewed 31 Oct. 2014).