

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR APPROVAL OF ASSET SALE)	
FROM THE HOGAN COMPANY TO CORPORATE)	CASE NO. 93-260
TELEMANAGEMENT GROUP, INC.)	

O R D E R

This matter arising upon petition of the Hogan Company ("Hogan") and Corporate Telemanagement Group, Inc. ("CTG") filed September 1, 1993 pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of their agreement for the sale and purchase of assets on the grounds that the information is of a personal nature, that disclosure of the information is likely to prejudice CTG's negotiations with other companies they may seek to acquire, and that disclosure of the information is likely to cause competitive injury, and it appearing to this Commission as follows:

Hogan operates a long-distance telephone business headquartered in Bellevue, Washington. On June 18, 1993, Hogan and CTG entered into an agreement under the terms of which Hogan agreed to sell to CTG certain of its assets utilized in its operations. Hogan and CTG now seek approval from this Commission of the sale and have filed a copy of their agreement. By this petition, Hogan seeks to protect certain portions of the agreement as confidential.

KRS 61.872 requires all information filed with a public agency to be available for public inspection unless otherwise exempted by statute. Exemptions from public inspection are

provided in KRS 61.878. That section of the statute exempts 11 categories of information. Any person seeking to protect information as confidential must establish that the information falls into one or more of those categories.

One of the grounds relied upon by Hogan and CTG is that the information pertaining to the purchase price, other consideration, creditors, and the amounts of accounts receivable directly pertain to the financial status of Walter Hogan, the sole stockholder and director of Hogan.

KRS 61.878(1)(a) does exempt from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." To qualify for exemption under this provision, it must be established that the information sought to be protected relates to details of an individual's private life and that the individual's privacy interest in the information outweighs the public's interest in the information.

Assuming that Hogan does seek to protect this information on behalf of Walter Hogan, the petition does not establish how disclosure of the information will adversely affect the private interests of Walter Hogan nor does it establish how such interests outweigh the public's interest in the information. Therefore, the petition cannot be granted on those grounds.

The petition also alleges that disclosure of the terms of the agreement may "influence or prejudice" CTG's negotiations with other companies and that the terms of the agreement address other

issues "which are sensitive from a competitive perspective." KRS 61.878(1)(C) exempts information confidentially disclosed to an agency if public disclosure of that information is likely to cause competitive harm to the party from whom the information was obtained. To qualify for this exemption the party claiming confidentiality must demonstrate actual competition and likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage. While the petition alleges that disclosure of the information sought to be protected would result in competitive injury, it neither identifies competitors who would benefit from the information nor does it demonstrate how the information could be used to Hogan and CTG's disadvantage. Therefore, the petition cannot be granted on those grounds.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential certain portions of the agreement between Hogan and CTG be and is hereby denied.
2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this order to allow Hogan and CTG an opportunity to file a supplemental petition.

3. If at the expiration of the 20-day period a supplemental petition has not been filed, the information shall without further orders herein be placed in the public record.

Done at Frankfort, Kentucky, this 2nd day of November, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director