

0810133

UNITED STATES OF AMERICA

consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed a Consent Agreement, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Reed Elsevier NV is a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Radarweg 29, 1043 NX Amsterdam, The Netherlands.
2. Respondent Reed Elsevier PLC is a public limited company, organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 1-3 The Strand, WC2N 5JR, London, England.
3. Respondent Reed Elsevier Group plc is a public limited company, organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 1-3 The Strand, WC2N 5JR, London, England.
4. Respondent Reed Elsevier Inc. is a corporation, organized, existing, and doing business under and by virtue of the laws of Massachusetts, with its office or principal place of business at 125 Park Avenue, Suite 2300, New York, New York 10017.
5. Respondent ChoicePoint Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Georgia, with its office and principal place of business located at 1000 Alderman Drive, Alpharetta, Georgia 30005.
6. Respondent ChoicePoint Services Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Georgia, with its office and principal place of business located at 1000 Alderman Drive, Alpharetta, Georgia 30005.

7. Respondent ChoicePoint Government Services LLC is a Georgia limited liability company with its office and principal place of business located at 1000 Alderman Drive, Alpharetta, Georgia 30005.

8. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Reed Elsevier NV” means Reed Elsevier NV, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Reed Elsevier NV, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Reed Elsevier PLC” means Reed Elsevier PLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Reed Elsevier PLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Reed Elsevier Group plc” means Reed Elsevier Group plc, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Reed Elsevier Group plc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Reed Elsevier Inc.” means Reed Elsevier Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions (including, but not limited to LexisNexis), groups, and affiliates controlled by Reed Elsevier Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “ChoicePoint Inc.” means ChoicePoint, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by ChoicePoint Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- F. “ChoicePoint Services Inc.” means ChoicePoint Services Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by ChoicePoint Services Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- G. “ChoicePoint Government Services LLC” means ChoicePoint Government Services LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by ChoicePoint Government Services LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- H. “Reed Elsevier” means Reed Elsevier NV, Reed Elsevier PLC, Reed Elsevier Group plc, and Reed Elsevier Inc.
- I. “ChoicePoint” means ChoicePoint Inc., ChoicePoint Services Inc., and ChoicePoint Government Services LLC.
- J. “Commission” means the Federal Trade Commission.
- K. “Respondents” means Reed Elsevier and ChoicePoint individually and collectively, *provided, however*, that, after the Closing Date, Respondents does not mean ChoicePoint Government Services LLC.
- L. “Acquisition” means the February 20, 2008, proposed acquisition by Reed Elsevier for which a filing was made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act on February 28, 2008, pulled and refiled on March 28, 2008, by Reed Elsevier.
- M. “Assets to Be Divested” means the Employees, the CLEAR Assets, and the AutoTrackXP Assets; *provided, however*, that the use of the AutoTrackXP Assets, whether alone or with the CLEAR Assets, shall be limited to use only in the Field; *provided further* that Respondents shall retain joint ownership rights in the AutoTrackXP Software and AutoTrackXP Intellectual Property for use outside the Field.
- N.

4. access to all AutoTrackXP Data during the term of the Transition Services Agreement included in the Purchase Agreement attached to this Order as non-public Appendix 1, or, if Thomson Reuters is not the Commission-approved Acquirer, for a period of two (2) years;
 5. all rights to sue for infringement or misappropriation of any of the AutoTrackXP Intellectual Property in the Field; and
 6. all services and sales contracts relating to the use of the AutoTrackXP Software in the Field, if any.
- O. “AutoTrackXP Data” means all data used in connection with the AutoTrackXP Software in the Field, including, but not limited to data concerning individuals, businesses, and entities.
- P. “AutoTrackXP Intellectual Property” means all Intellectual Property that (1) is embodied by or used in the AutoTrackXP Software, or (2) has claims that cover the AutoTrackXP Software or the use thereof, in each case as existing on the Closing Date;
- Q. “AutoTrackXP Software” means the AutoTrackXP Middleware and the AutoTrackXP User Interface.
- R. “CLEAR Assets” means:
1. the source code and the object code of the user interface programs known as Consolidated Lead Evaluation and Reporting (“CLEAR”) and 11(e proelectua) [(aar lrEARsD]nx

- 6. all services and sales contracts for products or services relating to the use of the CLEAR User Interface, if any.
- S. “CLEAR Data” means all data used in connection with the CLEAR User Interface, including, but not limited to data concerning individual, businesses, and entities.
- T. “Closing Date” means the date on which Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Assets to Be Divested and , if Thomson

- AA. “Employees” means the employees identified in the non-public Appendix II attached to this Order.
- BB. “Field” means Public Records Services provided to (1) Governmental Agencies and (2) any systems integrator, contractor, or outsourcer accessing content or services for the purpose of servicing any Governmental Agency.
- CC. “Governmental Agency” means any (1) federal, state, local, municipal, foreign, or other government; (2) federal, state, local or foreign

- HH. “Marketing Materials” means all marketing materials related to the Assets to Be Divested and, if Thomson Reuters is not the Commission-approved Acquired, the Supplemental Assets, as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data; reimbursement data), marketing information (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; and advertising and display materials; promotional and marketing materials, and other similar materials.
- II. “Public Records Services” means an integrated solution utilizing multiple sources of data and search, retrieval, linking, and reporting analytics concerning individuals, businesses or other organizations, and property.
- JJ. “Purchase Agreement” means the Membership Interest Purchase Agreement, by and among Reed Elsevier Inc., ChoicePoint, Thomson Reuters, and Thomson Reuters U.S. Inc., dated as of August 29, 2008, and amendments, exhibits, attachments, agreements, and schedules thereto (including, without limitation, the Software Joint Ownership, Trademark Assignment, and Trademark License Agreement, the Transition Services Agreement, and the Service Supply Agreement) related to the AutoTrackXP Assets to Be Divested and the CLEAR Assets to Be Divested, that have been approved by the Commission to accomplish the requirements of this Order. The Purchase Agreement is attached to this Order as non-public Appendix I.
- KK. “Remedial Agreement” means the following: (1) the Purchase Agreement; and/or (2) any agreement between the Respondent(s) and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to

from ChoicePoint including the name, address and relevant contact person of each prospective customer of AutoTrackXP products or services accompanied by all ChoicePoints3Tq13(ouo10(ete12(ere1)17(po10(ert11(es,9(n)9(nd 10(en)9(nllo)11(rhe)917(r d13

Be Divested and the Supplemental Assets within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

provided further that if the Respondents have divested the Assets to Be Divested to

files related to the Assets to Be Divested and, if the Commission-approved Acquirer is not Thomson Reuters, the Supplemental Assets that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information, other

- F. The purpose of the divestiture of the Assets to Be Divested and, if Thomson Reuters is not the Commission-approved Acquirer, the Supplemental Assets is to ensure the continued use of the assets in the same business in which the Assets to Be Divested and the Supplemental Assets were engaged at the time of the announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint one or more Interim Monitors to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Remedial Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) Days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) Days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purpose of the Order.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order, and in consultation with the Commission, including, recommending that the Commission direct the Respondents to effect such modifications to the manner of divestiture of the Assets to Be Divested to Thomson Reuters (including, but not limited to, entering into additional agreements or arrangements) as are necessary to satisfy the requirements of this Order;

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
3. The Interim Monitor shall serve until the completion by Respondents of the divestiture of the Assets to Be Divested, and, if Thomson Reuters is not the Commission-approved Acquirer, the Supplemental Assets pursuant to the Decision and Order in a manner that fully satisfies the requirements of the Order and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of implementing and marketing the Assets to Be Divested and, if Thomson Reuters is not the Commission-approved Acquirer, the Supplemental Assets independently of Respondents. As necessary or appropriate, the Commission may extend or modify this period to accomplish the purposes of the Order;
4. Subject to any demonstrated legally recognized privilege, the Interim Monitor

the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; and

8.

appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee

such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in the contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further* that Respondents shall select such entity within five (5) Days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's

7. In the event that the Divestiture Trustee determines that he or she is unable to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed in a manner that preserves their marketability, viability and competitiveness and ensures their continued use in the development, distribution, marketing, promotion, sale, or after-sales support of Public Records Services

V.

- B. at least thirty (30) days prior to any proposed: (1) dissolution of Respondent; (2) acquisition, merger, or consolidation of Respondent; or (3) any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to a Respondent, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

1. access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and
2. to interview officers, directors, or employees of Respondent, who may have counsel present, regard64 -cis such matters. 2.
and

CONFIDENTIAL APPENDIX I

PURCHASE AGREEMENT

[Redacted From the Public Record Version But Incorporated By Reference]

CONFIDENTIAL APPENDIX II

EMPLOYEES

[Redacted From the Public Record Version But Incorporated By Reference]