

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

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In the Matter of)	
)	
Reed Elsevier NV,)	
a corporation,)	
)	
Reed Elsevier PLC,)	
a public limited company)	
)	
Reed Elsevier Group plc,)	Docket No. C-4257
a public limited company)	
)	
Reed Elsevier Inc.,)	
a corporation)	
)	
ChoicePoint Inc.,)	
a corporation,)	
)	
ChoicePoint Services Inc.,)	
a corporation, and)	
)	
ChoicePoint Government Services LLC,)	
a limited liability company.)	
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DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Reed Elsevier, Inc., a subsidiary of Respondent Reed Elsevier Group plc, which is owned by Respondent Reed Elsevier NV and Respondent Reed Elsevier PLC (collectively “Reed Elsevier”) of Respondent ChoicePoint Inc., Respondent ChoicePoint Services Inc., and Respondent ChoicePoint Government Services LLC (collectively “ChoicePoint”), and Respondents having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, it would be a

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, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, 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

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 AutoTra

- 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 Reuters is not the Commission-approved Acquirer, the Supplemental Assets, pursuant to this Order.

- U. “Commission-approved Acquirer” means the following: (1) an entity that is specifically identified in this Order to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey

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 governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or the Federal Reserve System Board of Governors, and the twelve regional Federal Reserve Banks); or (3) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power, including any court or arbitrator.
- DD. “Governmental Entity” means any federal, state, local or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.
- EE. “Intellectual Property” means any or all of the following and all rights arising out of or associated therewith: (1) all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (2) all inventions (whether patentable or not), invention disclosures, improvements, proprietary information, know-how, technology, technical data and customer lists, and all documentation relating to any of the foregoing (exclusive, however

- 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 be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order.
- LL. “Software” means the AutoTrackXP Software and the CLEAR User Interface.
- MM. “Supplemental Assets” means the following, to the extent and in the form such assets are in the possession of, or will become in the possession of Reed Elsevier pursuant to the Acquisition, and to the extent such assets are requested by a Commission-approved Acquirer other than Thomson Reuters:
1. past and present lists of customers for AutoTrackXP products or services in the Field, including the name, address, and relevant contact person of each such customer, a detailed list of each prospective customer in the Field of ChoicePoint that has previously received a sales quote for AutoTrackXP products or services from ChoicePoint including the name, address and relevant contact person of each

prospective customer of AutoTrackXP products or services accompanied by all ChoicePoint quote reports, and all other data and information relating to said customers and ChoicePoint sales activities relating thereto;

- 2. all vendor lists detailing the name, address, and relevant contact person for each past and present vendor supplying to ChoicePoint Products or Services relating to the AutoTrackXP Software

AutoTrackXP Assets and the CLEAR Assets, and the modifications or improvements thereto; and

10. as existing on the Closing Date, all Intellectual Property licensed to a Respondent and used with the AutoTrackXP Assets or the CLEAR Assets, to the extent the licensor will agree to the transfer, but excluding commercially available software and excluding modifications and improvements to the Intellectual Property that are not licensed to a Respondent.
- NN. “Thomson Reuters” means Thomson Reuters (Legal) Inc., a corporation organized under the laws of Minnesota, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Thomson Reuters (Legal) Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- OO. “Trademark Term” means two (2) years from the Effective Date.

II.

IT IS FURTHER ORDERED that:

- A. Not later than fifteen (15) Day

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 Thomson Reuters after the Commission has accepted this Order for public comment but prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, 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 the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Respondents shall comply with all terms of the Remedial Agreement which shall be incorporated by reference and made a part of this Order. Failure by Respondents 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 than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the Assets to Be Divested and, if Thomson Reuters is not the Commission-approved Acquirer, the Supplemental Assets; or (3) applicable Law; *provided, however*, that Respondents may use Confidential Business Information which does not relate solely to the AutoTrackXP Assets in the Field during the Trademark Term;
5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; and
6. provide written notification of the results of the use of the Confidential

from the vendor or supplier parties to each of the contracts for the AutoTrackXP Data and the CLEAR Data for the supply by the Respondents of the data, content, source documents, and other information (“Data”) covered by such contracts for use in the provision of Public Records Ser

F. The purpose 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 shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order;
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor;
7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by 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. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assis

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

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 e

and competitiveness and ensures their continued use in the development, distribution, marketing, promotion, sale, or after-sales support of Public Records Services provided to customers in the Field, the Divestiture Trustee may assign, grant, license, divest, transfer, deliver or otherwise convey such additional assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.

8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by this Order.
 9. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) Days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
 - F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
 - G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Interim Monitor pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. Within five (5) Days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) Days after the date this Order becomes final, and every sixty (60) Days thereafter until Respondents have fully complied with Paragraph II of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- C. One (1) year after the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VI.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to each of Respondent's officers, employees, or agents having managerial responsibility for any of Respondent's obligations under Paragraphs II through V of this Order, no later than ten days from the date this Order becomes final.

VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission:

- A. of any change in its principal address ~~by filing a copy of the change with the Commission~~

- 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 copD(nd)Tj12.0000 0.0000 TD(fasec)Tj31.2000 0.0000 Tj7.3

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]