

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
Department of Justice)
Antitrust Division)
325 7th Street, N.W., Suite 300)
Washington, DC 20530)
)
Plaintiff,)

v.

THE THOMSON CORPORATION,)
Toronto Dominion Bank Tower)
Suite 2706 Toronto Dominion Center)
Toronto, Ontario M5K 1A1)
Canada)

HARCOURT GENERAL, INC.,)
27 Boylston Street)
Chestnut Hill, MA 02467)

REED ELSEVIER INC.,)
275 Washington Street)
Newton, MA 02158)
)
Defendants.)

CASE NUMBER 1:01CV01419
JUDGE: Gladys Kessler
DECK TYPE: Antitrust
DATE STAMP: 06/27/2001

Filed:

COMPLAINT

The United States, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin The Thomson Corporation (“Thomson”) from acquiring the college textbook publishing and computer-based testing businesses of Harcourt General, Inc. (“Harcourt”) from Reed Elsevier Inc. (“Reed Elsevier”), and to obtain other relief as appropriate. Plaintiff alleges as follows:

1. Thomson and Harcourt, two of the world’s largest publishers of textbooks and other educational materials, are direct competitors in the development, marketing and sale of

textbooks and print and Internet-based supplemental educational materials used in college courses. For dozens of college courses, they publish textbooks that are close substitutes.

2. Thomson and Harcourt also are direct competitors in the market for nationwide delivery and administration of certain computer-based tests used by professional organizations, as well as state and local government agencies, for purposes of licensure and certification. Such tests, commonly referred to in the industry as “high stakes,” typically have very important consequences for the candidates and invariably require a higher level of security.

3. Unless this acquisition is blocked, competition in certain markets for college textbooks and ancillary educational materials will be substantially lessened, resulting in students paying higher prices for them. In addition, the quality of both textbooks and ancillary educational materials is likely to decline. Further, competition in the market for nationwide delivery and administration of high stakes computer-based examinations will be substantially lessened, resulting in both test sponsors and candidates paying higher prices for such examinations and in a reduction in the quality of test administration, facilities and services.

I. Jurisdiction and Venue

4. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. Defendants are engaged in activities that substantially affect interstate commerce. The Court has jurisdiction of this action and jurisdiction over the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

6. Defendant Thomson is a foreign corporation that transacts business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

7. Defendants Harcourt and Reed Elsevier transact business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. Defendants and the Transaction

8. The Thomson Corporation is a foreign corporation organized and existing under the laws of Canada, with its headquarters in Toronto, Ontario. Thomson publishes textbooks and other educational materials used in higher education under a variety of names, including Southwestern, Wadsworth, Heinle & Heinle, and Brooks/Cole. It is one of the world's largest commercial publishers and a leading competitor in many segments of the educational publishing marketplace. In addition, through its subsidiary Prometric, Inc., a Maryland corporation, Thomson offers computer-based testing services, including test delivery and administration, throughout the United States. Prometric is one of the few companies that operates a nationwide network of testing facilities and/or is offering high stakes computer-based testing delivery and administration services.

9. Harcourt General, Inc. is a corporation organized and existing under the laws of Delaware, with its headquarters in Chestnut Hill, Massachusetts. Harcourt publishes textbooks and other educational materials under the Harcourt, Saunders, Dryden, and Holt Rinehart Winston imprints. It is one of the world's largest publishing companies and a leading competitor in many segments of the educational publishing marketplace. In addition, through its Assessment Systems, Inc. ("ASI") subsidiary, a Pennsylvania corporation, Harcourt offers computer-based testing services, including test development, delivery, and administration, throughout the United States. ASI is one of the few companies that operates a nationwide network of facilities and/or is offering high stakes computer-based testing delivery and administration services.

10. Reed Elsevier Inc., is a corporation organized and existing under the laws of Massachusetts, with its headquarters in Newton, Massachusetts. Reed Elsevier and Harcourt reached an agreement on October 27, 2000, under which Reed Elsevier will purchase all of the assets of Harcourt. On the same date, Reed Elsevier and Thomson reached an agreement under which Thomson will purchase from Reed Elsevier: (1) Harcourt's Higher Education Group, which publishes textbooks and print and Internet-based ancillary educational materials in major academic disciplines in higher education, and (2) most of Harcourt's Corporate and Professional Services Group, which includes ASI.

III. Relevant Geographic Market

11. The relevant geographic market is worldwide. Defendants market and sell textbooks and ancillary educational materials for use in American college and university courses throughout the United States within the meaning of Section 7 of the Clayton Act.

12. Prometric and ASI both deliver and administer a wide variety of high stakes computer-based tests used for professional licensing and certification. To effectively administer these examinations, which are taken by candidates nationwide, a company must operate numerous secure, proctored testing facilities located throughout the United States. Customers would be unable and unwilling to use foreign facilities in the face of a small but significant price increase by testing companies. The United States, therefore, is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

IV. Reduced Competition in College Textbook Markets

A. Relevant Product Markets

13. Publishers market textbooks and other ancillary educational materials to professors and in colleges and universities throughout the country. In most cases, professors select the materials that will be used for their courses.

14. Professors generally select textbooks to serve as the primary teaching materials for their courses. Textbooks provide the core written material for a course, serve as the foundation for professors' overall lesson plans, and establish the framework for class discussions. Professors choose among textbooks that can provide this core content and structure. Students then buy the selected textbooks, typically at college bookstores.

15. As inducements to choose a particular publisher's textbooks, publishers sometimes offer professors free ancillary educational materials, such as a teacher's edition of the textbooks, audio-visual teaching tools, and copies of the textbooks for teaching assistants. In addition, sometimes students buy the textbooks as part of a discounted package that includes further ancillary educational materials, such as CD-ROMs, workbooks, and study guides.

16. For the thirty-eight (38) courses identified in Exhibit A, attached hereto, college textbooks and ancillary educational materials are used as primary teaching materials.

17. Professors choosing textbooks and ancillary educational materials for any of the courses listed in Exhibit A, attached hereto, would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of textbooks available for that course, or a small but significant decrease in the number or quality of ancillary educational materials sold or included with the textbooks. In addition, students purchasing a textbook for any of the courses listed in Exhibit A are unlikely to have any significant alternatives.

18. In many courses, used textbooks are available to some students. Textbooks are generally revised every three to four years, and professors usually require students to use the newest edition. This limits the extent to which used textbooks compete with new textbooks. The supply of used textbooks is also limited by the number of students who sell their textbooks back to college bookstores. As a result, used textbooks cannot defeat an increase in the price of new textbooks or a decrease in the supply of the ancillary educational materials included or sold with them.

19. Textbooks, along with ancillary educational materials that are published and marketed for specific textbooks, for each of the courses listed in Exhibit A, attached hereto, each constitute a separate relevant product market and a line of commerce for purposes of analyzing this acquisition under the Clayton Act.

B. Competition and Entry

20. In each relevant market identified in the courses identified in Exhibit A, attached hereto, Thomson and Harcourt offer textbooks that are close substitutes. They are among the few firms that compete to provide the textbooks and ancillary educational materials, accounting for a significant share of all new sales. Thus, the proposed acquisition would significantly increase concentration in already highly concentrated markets.

21. In any of the relevant product markets identified in Exhibit A, attached hereto, if Thomson acquires Harcourt's products, there is unlikely to be timely entry by any company that would be sufficient to defeat an anticompetitive price increase or a decrease in ancillary educational materials or that would spur continuing innovation in the development and production of such products.

22. Successful entry would require a publisher to assemble authors qualified to write a textbook and a sophisticated editorial staff to develop the new text, which then must be reviewed by numerous professors prior to its publication. This process is costly and time-consuming. In addition, effectively selling college textbooks requires a trained and knowledgeable sales force to visit and foster relationships with professors at each school to which the textbook is sold, along with direct mail solicitation and participation in educational conventions. Finally, the reputation of the successful incumbent textbook is difficult for a new textbook to challenge. In many of the markets listed in Exhibit A, attached hereto, the leading textbooks have been published for some time, and are well known to those faculty members who teach in the field.

C. Harm to Competition

23. Competition between Thomson and Harcourt to provide textbooks for the courses listed in Exhibit A, attached hereto, has resulted in lower prices and has created a significant incentive for each to publish new titles and improve product quality. The proposed transaction would eliminate this competition. Following the merger, Thomson could unilaterally raise the prices of its or Harcourt's textbooks or reduce the number and quality of ancillary educational materials provided with these textbooks. Additionally, other competitors also would be more likely to increase their textbook prices or reduce the number and quality of ancillary educational materials provided with their textbooks. Finally, the acquisition would reduce incentives to publish new textbooks and ancillary educational materials and to improve existing products.

V. Reduced Competition in Computer-Based Testing Markets

A. Relevant Product Market

24. Many different entities (collectively “test sponsors”), including professional associations and state and local governments, use computer-based testing for licensing and certification. The creation, delivery, and evaluation of a test involves three stages: (1) developing test content; (2) delivering and administering tests; and (3) processing and reporting test results. Test sponsors using computer-based testing generally rely upon outside companies to perform each of the steps involved in developing and delivering their tests and evaluating the results. Alternatively, some test sponsors may develop the tests themselves, relying on another company to perform the remaining delivery and processing work. In addition, some test sponsors may use one company to develop their tests and another to deliver and administer them.

25. Test sponsors’ examinations may be classified as either “high stakes” or “low stakes.” High stakes tests involve those that have very important consequences for the candidates, such as real estate or stockbroker licenses, and certification to assist in surgical procedures, while low stakes tests include practice, training, and self-improvement tests. Test sponsors invariably require a higher level of security during the delivery and administration of high stakes tests than of low stakes tests.

26. Traditionally, licensing and certification examinations were administered through paper-and-pencil tests. However, computer-based testing offers both test sponsors and candidates a number of significant advantages compared to paper-and-pencil testing. Typically, paper-and-pencil tests are given only a few times each year at specified dates and times, while computer-based testing allows test sponsors to offer a test throughout the year on multiple days of the week. Candidates can therefore schedule the test at a convenient time. Such flexible

scheduling also benefits test sponsors, enabling them to distribute work more evenly throughout the year, rather than in concentrated periods surrounding the test dates, thus increasing the efficiency of their business operations.

27. Computer-based testing also allows the use of more innovative testing features than paper-and-pencil testing. Computer-based tests can be scored instantly, and test questions are more easily updated and improved. Computer-based tests also allow test sponsors to better identify questions that lead to false positives or false negatives. Further, “computer adaptive testing” allows for the test to adapt to the test taker’s performance (e.g., correct responses lead to increasingly difficult questions), thereby providing for more effective evaluations.

28. Test sponsors consider a number of factors in selecting a computer-based testing provider, including the number and locations of testing centers and geographic coverage of the testing center network; the proven ability to deliver computer-based tests throughout a network without technical difficulty; the security of the test delivery network; the ability to provide related services such as registration, scheduling, reporting, and data management; and price.

29. Test sponsors that offer high stakes computer-based examinations to a nationwide pool of candidates require that the computer-based testing company with whom they contract have a network of testing centers throughout the United States. Test sponsors require that, while examinations are occurring, such testing centers be devoted solely to testing and have adequate security to ensure the integrity of the sponsor’s examination and to prevent candidates from cheating. Requisite security measures include having secure computer servers, verifying each candidate’s identification prior to the examination, and providing proctors to ensure that candidates are not using unauthorized materials during the examination period. Because the proctors’ attention and time must be dedicated to monitoring the candidates, they cannot perform

other tasks during the examination period. Additional security measures that may be used include video cameras, fingerprint checks, viewing windows, and additional proctors.

30. Test sponsors using or considering nationwide high-stakes computer-based tests would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of delivery and administration services provided through a secure testing center network. As discussed, many test sponsors of nationwide high stakes computer-based examinations previously administered their examinations through paper-and-pencil testing. For the reasons stated above, switching to computer-based testing enabled them to improve the quality of their examinations. As a result, the existence of paper-and-pencil testing cannot defeat an increase in the price of computer-based test delivery and administration given through a nationwide secure testing center network.

31. Test sponsors also would not self-deliver and administer computer-based tests in response to a small but significant increase in the price of such services. Obtaining the primary benefits of computer-based testing requires having permanent testing sites that are available throughout the year, as well as the requisite number of personnel to staff, manage, and operate the centers. Establishing and operating such centers requires significant expenditures of time and financial resources. Individual test sponsors do not have the testing volume to justify operating a network of year-round testing centers or purchasing the necessary computer equipment and software to operate such centers.

32. In addition, computer-based testing administered via the Internet cannot defeat a small but significant increase in the price of delivery and administration services given through a secure testing center network. Although the Internet may be used to deliver tests to individual testing centers or to an entire network, the security required for high stakes examinations still

requires that they be administered in a secure, proctored environment. Currently, the technology is not available to enable test proctoring via the Internet.

33. Delivery and administration of nationwide high stakes computer-based tests through a network of secure testing centers constitutes a separate relevant product market and a line of commerce for purposes of analyzing this acquisition under the Clayton Act.

B. Competition and Entry

34. Both Prometric and ASI offer a nationwide network of secure testing centers for the delivery and administration of high stakes computer-based examinations that are close substitutes. They are among the very few firms that compete to provide such a network and account for a significant share of all new contracts. Using testing capacity as an indicator of market share and a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”), defined and explained in Exhibit B, attached hereto, and taking into account already committed entry by other competitors, the HHI for the market for nationwide high stakes computer-based tests is approximately 3410. After the proposed acquisition, the HHI would increase by approximately 1120 points, resulting in a post-merger HHI of approximately 4530. Thus, the proposed acquisition would significantly increase concentration in an already highly concentrated market.

35. If Thomson acquires ASI, there is unlikely to be timely entry by any company offering a nationwide network of secure testing sites for the delivery and administration of high stakes computer-based examinations sufficient to defeat an anticompetitive price increase.

36. Successful entry would require a computer-based testing vendor to develop a nationwide network of approximately 200 secure testing centers that meet the requirements for

high stakes computer-based testing. The ongoing, day-to-day operation of such a network is costly and time-consuming.

37. In addition, to successfully enter the market for nationwide delivery and administration of high stakes computer-based tests, a vendor must be able to obtain contracts with enough test sponsors to cover the cost of building and maintaining a nationwide network. A new entrant faces a number of hurdles in attempting to obtain the requisite amount of business. First, the duration of the contracts for high stakes computer-based testing delivery and administration services typically is several years, and test sponsors generally contract with a single company to provide these services. A computer-based testing vendor attempting to enter the market for delivery and administration services therefore must wait until a contract is near its expiration before the company has an opportunity to bid for it. Second, because there are significant costs involved in switching computer-based test providers, an incumbent provider has a substantial advantage in bidding for such contracts. Third, it is expensive and time-consuming to convert an examination from paper-and-pencil to computer-based format, thus making it difficult for a new entrant to enter the market through conversion of sponsors currently using paper-and-pencil testing. Finally, many test sponsors will contract only with a provider whose testing centers are currently operational, and who have demonstrated an ability to successfully administer high stakes examinations.

C. Harm to Competition

38. Competition between Prometric and ASI to provide nationwide high stakes computer-based testing delivery and administration services has resulted in lower prices for test sponsors and candidates and has created significant incentives for each to maintain and expand its nationwide network of testing centers and improve service quality. The proposed transaction

would eliminate this competition. Following the merger, Prometric could raise the prices for, or reduce the quality of, its computer-based testing delivery and administration services.

VI. Violations Alleged

39. The effect of Thomson's acquisition of Harcourt's Higher Education and Corporate and Professional Services Groups would be to lessen substantially competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

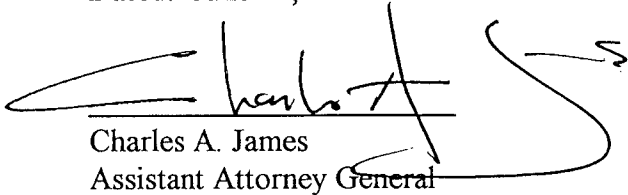
40. Unless restrained, the transaction likely will have the following effects, among others:

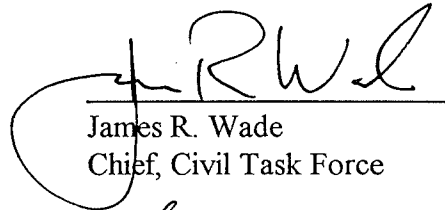
- a. actual and future competition between Thomson and Harcourt will be eliminated;
- b. competition generally in the markets for college textbooks and ancillary educational materials for each of the college courses identified in Exhibit A, attached hereto, will be substantially lessened;
- c. competition generally in the market for nationwide computer-based testing delivery and administration services will be substantially lessened;
- d. prices for college textbooks and ancillary educational materials for each of the college courses identified in Exhibit A will increase or the value of materials or services will decline;
- e. prices for nationwide computer-based testing delivery and administration services will increase or the value of services will decline;
- f. competition in the development and improvement of college textbooks and ancillary educational materials in each of the college courses identified in Exhibit A will be substantially lessened; and
- g. competition in the development and improvement of nationwide computer-based testing delivery and administration services will be substantially lessened

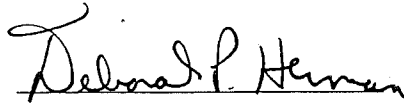
VII. Request for Relief

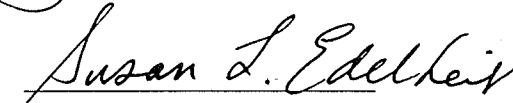
41. The plaintiff requests: (a) adjudication that Thomson's proposed acquisition of Harcourt's college textbook publishing would violate Section 7 of the Clayton Act; (b) adjudication that Thomson's proposed acquisition of Harcourt's computer-based testing businesses would violate Section 7 of the Clayton Act; (c) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (d) an award to the plaintiff of the costs of this action; and (e) such other relief as is just and proper.


Dated: June 27, 2001

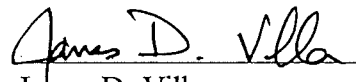

Charles A. James
Assistant Attorney General

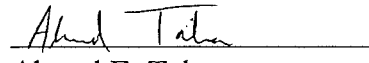

James R. Wade
Chief, Civil Task Force


Deborah P. Herman
Deputy Assistant
Attorney General


Susan L. Edelheit
Assistant Chief,
Civil Task Force


Constance K. Robinson
Director of Operations
and Merger Enforcement


James D. Villa
D.C. Bar #417471


Ahmed E. Taha

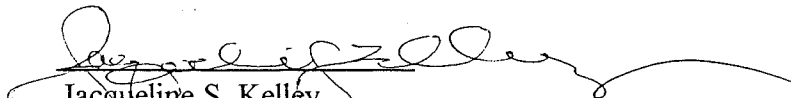
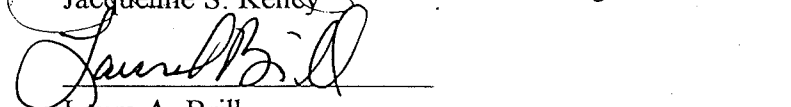

Jacqueline S. Kelley

Laura A. Brill
Trial Attorneys

EXHIBIT A

College Courses

Accounting: Financial: Introductory: Graduate
Chemistry: Biochemistry: Principles: One Term
Chemistry: Introductory: Nursing/Allied Health
Chemistry: Organic: Introductory: One Term
Communication: Communication: Interpersonal Communications
Communication: Communication: Principles
Communication: Journalism: Reporting
Criminal Justice: Introductory
Economics: Introductory
Economics: Microeconomics: Managerial Economics
Education: Psychology: Learning and Cognition
Environmental Science: Introductory
Family and Consumer Studies: Nutrition
Finance: Financial Markets and Institutions: Commercial Bank Management
Finance: Financial Markets and Institutions: Financial Institutions and Markets
Finance: Survey
Foreign Languages & Literature: French: Language: Elementary
Foreign Languages and Literature: French: Language: Intermediate
Foreign Language and Literature: French: Literature
Foreign Languages & Literature: Spanish: Language: Intermediate
Foreign Languages & Literature: Spanish: Literature: Literature
Geology: History
Management: Strategic Management: Small Business Management
Marketing: Research
Mathematics: Calculus: General: Reform
Mathematics: Trigonometry
Music: Applied: Piano/Organ
Music: Music Theory: All Other
Philosophy: Introductory
Philosophy: Logic: Logic
Philosophy: Philosophy of: Law
Philosophy: Philosophy of: Religion
Psychology: Adjustment
Psychology: Clinical: Personality
Psychology: Developmental: Motivation and Emotion
Psychology: Physiological: Sensation and Perception
Psychology: Research: Statistics
Psychology: Social: of Women

EXHIBIT B

Herfindahl-Hirschman Index Calculations

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.