

Interlocutory Orders, Etc.

IN THE MATTER OF

**RED SKY HOLDINGS LP,
AND
NEWPARK RESOURCES INC.**

Docket No. 9333 Order, December 10, 2008

Order granting complaint counsel's and respondents' joint motion to dismiss the Complaint.

ORDER DISMISSING COMPLAINT

On October 22, 2008, the Federal Trade Commission issued the Administrative Complaint in this matter, having reason to believe that respondents Red Sky Holdings LP ("Red Sky") [through its subsidiary CCS Corporation ("CCS")] and Newpark Resources Inc. ("Newpark") had entered into an acquisition agreement, in violation of Section 5 of the Federal Trade Commission Act; 15 U.S.C. § 45 – for the acquisition by Red Sky of Newpark – and having reason to believe that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act. Complaint Counsel and the Respondents have now filed a Joint Motion to Dismiss Complaint, on the grounds that the Respondents are abandoning the proposed acquisition by Red Sky of Newpark Environmental Services; that Red Sky has withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for the proposed transaction; and that the complaint is now moot.¹

The Commission has determined to dismiss the Administrative Complaint without prejudice, consistent with both Commission precedent and the current posture of this case. For

¹ *Joint Motion to Dismiss Complaint* (November 25, 2008) ("Joint Motion"), available at <http://www.ftc.gov/os/adjpro/d9333/081125jointmodismisscmplt.pdf>, at 1.

Interlocutory Orders, Etc.

example, in *Inova Health System Foundation et al.*, the Commission recently issued an order dismissing the complaint on the grounds that the Respondents had abandoned the transaction and had withdrawn their Hart-Scott-Rodino Notification and Report Forms.² The Commission noted that

the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint have been accomplished without the need for further administrative litigation. In particular, the Respondents have publicly announced that they have abandoned the proposed merger at issue. Moreover, the Respondents have withdrawn the Hart-Scott-Rodino Notification and Report Forms they filed for the proposed transaction. As a consequence, the Respondents would not be able to effect the proposed transaction without filing new Hart-Scott-Rodino Notification and Report Forms.³

² *In the Matter of Inova Health System Foundation, and Prince William Health System, Inc.*, Docket No. 9326, Order Dismissing Complaint (June 17, 2008), available at <http://www.ftc.gov/os/adjpro/d9326/080617orderdismisscmt.pdf>; accord, *In the Matter of Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company*, Docket No. 9322, Order Dismissing Complaint (January 31, 2008) (Public Version), available at <http://www.ftc.gov/os/adjpro/d9322/080204complaint.pdf>; *In the Matter of Swedish Match North America Inc., and National Tobacco Company, L.P.*, Docket No. 9296 (Swedish Match), Order Dismissing Complaint (January 4, 2001), available at <http://www.ftc.gov/os/2001/01/swedishdismisscmp.htm>; *In the Matter of H..J. Heinz Company, Milnot Holding Corporation, and Madison Dearborn Capital Partners, L.P.*, Docket No. 9295 (H..J. Heinz), Order Dismissing Complaint (December 4, 2001), available at <http://www.ftc.gov/os/2001/12/heinzorder.pdf>.

³ *Inova Health System Foundation*, *supra* note 2, at 2.

Interlocutory Orders, Etc.

Similarly, in this matter, the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint have been accomplished without the need for further administrative litigation. In particular, the Respondents have announced that they are abandoning the proposed acquisition at issue, and Red Sky has withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for the proposed transaction. As a consequence, the Respondents would not be able to effect the proposed transaction without filing new Hart-Scott-Rodino Notification and Report Forms.

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

IT IS ORDERED THAT the Administrative Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

**REED ELSEVIER NV,
REED ELSEVIER PLC,
REED ELSEVIER GROUP PLC,
REED ELSEVIER INC.,
CHOICEPOINT INC.,
CHOICEPOINT SERVICES INC.,
AND
CHOICEPOINT GOVERNMENT SERVICES LLC**

FTC File No. 081 0133

Order, December 10, 2008

Letter approving the appointment of the Interim Monitor and the November 18, 2008 Interim Monitor Agreement entered into between Mr. Pettit and the Respondents.

LETTER APPROVING MONITOR AGREEMENT

Dear Mr. Lipstein:

This letter notifies the proposed Respondents in the above-referenced matter that the Federal Trade Commission has approved the appointment of Mitchell S. Pettit of MSP Strategic Communications, Inc., as the Interim Monitor, and has approved the Interim Monitor Agreement by and among Mr. Pettit and Respondents dated November 18, 2008, pursuant to Paragraph 18 of the Agreement Containing Consent Order and, when made final, Paragraph III of the Decision and Order, issued in the above-referenced matter.

In according its approval, the Commission has relied upon the information submitted and representations made by Respondents and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

INTERIM MONITOR AGREEMENT

This Interim Monitor Agreement ("Monitor Agreement") entered into this ^{15th} day of November, 2008 by and among Reed Elsevier PLC, Reed Elsevier NV, Reed Elsevier Group plc, and Reed Elsevier, Inc. (collectively "Reed Elsevier"); and ChoicePoint Inc. and ChoicePoint Services Inc. (collectively "ChoicePoint") (where "Respondents," as used herein, means Reed Elsevier and ChoicePoint, individually and collectively); and Mitchell S. Pettit ("Mr. Pettit") provides as follows:

WHEREAS, the United States Federal Trade Commission (the "Commission"), *In the Matter of Reed Elsevier*, has accepted for public comment an Agreement Containing Consent Order ("Consent Agreement"), incorporating a Decision and Order ("Order") with Respondents, which, among other things, requires Respondents to divest certain defined assets pursuant to the Membership Interest Purchase Agreement By And Among Thomson Reuters (Legal) Inc., ChoicePoint Government Services LLC, ChoicePoint Services Inc., ChoicePoint Inc., Reed Elsevier Inc. and Thomson Reuters U.S. Inc., dated August 29, 2008, and those Ancillary Agreements referenced therein (collectively, the "Remedial Agreement"), and provide for the appointment of one or more Interim Monitors to ensure that Respondents comply with their obligations under the Order and the Remedial Agreement;

WHEREAS, the staff of the Commission has appointed Mr. Pettit as such monitor (the "Interim Monitor") pursuant to the Order to monitor Respondents' compliance with the terms of the Consent Agreement and Order and with the Remedial Agreement referenced in the Order, and Mr. Pettit has consented to such appointment;

WHEREAS, the staff of the Commission on November 12, 2008, notified Respondents of the selection of Mr. Pettit as the Interim Monitor, and Respondents on November 13, 2008 agreed to the selection of Mr. Pettit, and are executing this 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;

WHEREAS, this Monitor Agreement, although executed by the Interim Monitor and Respondents is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondents or the Interim Monitor under the Order, until it has been approved by the Commission; and

WHEREAS, the parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

Interlocutory Orders, Etc.

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Order.
2. The Interim Monitor shall have all of the powers and responsibilities conferred upon the Interim Monitor by the Order.
3. Respondents hereby agree that Respondents will fully comply with all terms of the Order requiring them to confer all rights, powers, authority and privileges upon the Interim Monitor, or to impose upon themselves any duties or obligations with respect to the Interim Monitor, to enable the Interim Monitor to perform the duties and responsibilities of the Interim Monitor thereunder.
4. Respondents further agree that:
 - a. they will use their commercially reasonable best efforts to provide the Interim Monitor with prompt notification of significant meetings, including date, time and venue, scheduled after the execution of this Monitor Agreement, relating to the Service Supply Agreement and Transition Services Agreement and such meetings may be attended by the Interim Monitor or his representative, at the Interim Monitor's option, or at the request of the Commission or staff of the Commission;
 - b. they will provide the Interim Monitor the minutes of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of the Respondents;
 - c. they will provide the Interim Monitor with copies of all reports submitted to the Commission pursuant to the Order, simultaneous with the submission of such reports to the Commission, for the duration of the Interim Monitor's term under this Agreement;
 - d. they will, subject to any demonstrated legally recognized privilege, grant the Interim Monitor 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; and
 - e. they will 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.

Interlocutory Orders, Etc.

5. Respondents shall promptly notify the Interim Monitor of any significant written or oral communication that occurs after the date of this Monitor Agreement between the Commission and Respondents related to the Service Supply Agreement and Transition Services Agreement, together with copies of such communications.
6. 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.
7. Respondents shall pay the Interim Monitor, in accordance with the fee schedule attached hereto as Confidential Appendix A, for all reasonable time spent in the performance of the Interim Monitor's duties and responsibilities, including all monitoring activities, all work in connection with the negotiation and preparation of this Monitor Agreement, all work in the nature of final reporting and file closure, and all reasonable and necessary travel time.
 - a. In addition, Respondents will pay (i) all out-of-pocket expenses reasonably incurred by the Interim Monitor in the performance of the Interim Monitor's duties and responsibilities, including any international telephone calls and any auto, train or air travel in the performance of the Interim Monitor's duties, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
 - b. The Interim Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.
8. The Interim Monitor shall maintain the confidentiality of all information provided to the Interim Monitor by Respondents. Such information shall be used by the Interim Monitor only in connection with the performance of the Interim Monitor's duties pursuant to this Monitor Agreement. Such information shall not be disclosed by the Interim Monitor to any third party other than:

Interlocutory Orders, Etc.

- a. persons employed by, or working with, the Interim Monitor under this Monitor Agreement, in which case such persons shall be informed of, and agree in writing to abide by, the confidentiality obligations applicable to the Interim Monitor, in accordance with Paragraph 12, below, or
 - b. persons employed at the Commission and working on this matter.
9. The Interim Monitor shall maintain a record and inform the Commission of all persons (other than representatives of the Commission) to whom confidential information related to this Monitor Agreement has been disclosed.
10. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
11. Upon termination of the Interim Monitor's duties under this Monitor Agreement, the Interim Monitor shall promptly return to Respondents all material provided to the Interim Monitor by Respondents and shall destroy any material prepared by the Interim Monitor that contains or reflects any confidential information of Respondents. Nothing herein shall abrogate the Interim Monitor's duty of confidentiality.
12. To the extent that the Interim Monitor wishes to retain any employee, agent, consultant or any other third party to assist the Interim Monitor in accordance with the Order, the Interim Monitor shall ensure that, prior to being retained, such persons execute a confidentiality agreement in a form agreed upon by the Interim Monitor and Respondents.
13. Nothing in this Monitor Agreement shall require Respondents to disclose any material or information that is subject to a legally recognized privilege or that Respondents are prohibited from disclosing by reason of law or an agreement with a third party.
14. Each party shall be reasonably available to the other to discuss any questions or issues that either party may have concerning compliance with the Order as they relate to Respondents.
15. Respondents hereby confirm their obligation to indemnify the Interim Monitor and hold the Interim Monitor harmless in accordance with and to the extent required by the Order. 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

Interlocutory Orders, Etc.

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.

16. Upon this Monitor Agreement becoming effective, the Interim Monitor shall be permitted, and Respondents shall be required, to notify all current Commission-approved Acquirers and potential future Acquirers with respect to his appointment as Interim Monitor.
17. In the event of a disagreement or dispute between Respondents and the Interim Monitor concerning Respondents' obligations under the Order, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the Commission's Compliance Division to resolve this issue.
18. This Monitor Agreement shall be subject to the substantive law of the State of New York (regardless of the choice of law principles of New York or those of any other jurisdiction).
19. This Monitor Agreement shall terminate when the last obligation under Service Supply Agreement and Transition Services Agreement has been fully performed; provided, however, that the Commission may extend this Monitor Agreement as may be necessary or appropriate to accomplish the purposes of the Order.
20. In the event that, during the term of this Monitor Agreement, the Interim Monitor becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Interim Monitor of any of his duties under this Monitor Agreement, the Interim Monitor shall promptly inform both Respondents and the Commission of such conflict or potential conflict.
21. In the performance of his functions and duties under this Monitor Agreement, the Interim Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his or her own business affairs.
22. It is understood that the Interim Monitor will be serving under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Interim Monitor and Respondents.
23. This Monitor Agreement is for the sole benefit of the Parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.

Interlocutory Orders, Etc.

24. This Monitor Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces any and all prior agreements or understandings, whether written or oral.

25. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail, facsimile (with acknowledgment of receipt of such facsimile having been received), or electronic mail, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Interim Monitor, to:

Mitchell Pettit

Telephone:

Email:

If Respondents, to:

LexisNexis Risk & Information Analytics Group
Attention: Michael C. Lamb, VP & Legal Director - LexisNexis Risk
& Information Analytics Group
Telephone:

Facsimile:

Email:

With copy to:

Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2695

Attention: Robert A. Lipstein
Telephone: 202-624-2630 (work)

Facsimile: 202-628-5116
Email: RLipstein@crowell.com

If to the Commission, to:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.

Interlocutory Orders, Etc.

Washington, DC 20580

Attention: Secretary
Telephone: (202) 326-2514
Facsimile: (202) 326-2496

With copy to:

Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

Attention: Assistant Director for Compliance
Telephone: (202) 326-2526
Facsimile: (202) 326-3396

26. This Monitor Agreement shall not become binding until it has been approved
by the Commission.

27. This Monitor Agreement may be signed in counterparts.

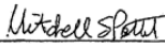
IN WITNESS WHEREOF, the parties hereto have executed this Monitor
Agreement as of the date first above written.

Reed Elsevier, Inc.

INTERIM MONITOR



Andrew Prosser
Reed Elsevier, Inc.



Mitchell Pettit

Interlocutory Orders, Etc.

IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,
AND
WILD OATS MARKETS, INC.***Docket No. 9324 Order, December 15, 2008*

Order taking Whole Foods Market's motion to stay the proceeding under advisement.

ORDER

On December 3, 2008, Respondent filed a Motion To Stay the Proceeding, To Amend the Scheduling Order, and to Certify the Questions to the Commission for Determination in this matter ("Motion"). On December 8, 2008, Complaint Counsel filed an Opposition to that Motion. On December 11, 2008, the Administrative Law Judge issued an Order certifying Respondent's Motion to the Commission without a recommendation. The Commission has taken the Motion, the Opposition, and the Order under advisement; no further briefing is needed; and the Commission will shortly issue an appropriate Order.

By the Commission.