

Complaint

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**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

*Docket No. C-4257; File No. 081 0133
Complaint, June 1, 2009 – Decision, June 1, 2009*

This consent order addresses the \$4.1 billion acquisition by Reed Elsevier of ChoicePoint. The complaint alleges that the acquisition would eliminate substantial competition between the only two significant suppliers of electronic public record services sold to law enforcement customers in the United States and enable LexisNexis to unilaterally raise the prices of electronic public records services. The complaint also alleges that this market is highly concentrated. The order requires the divestiture of assets related to ChoicePoint's AutoTrackXP and CLEAR electronic public records services to Thomson Reuters Legal Inc. The order also requires Reed Elsevier to provide various transitional services and allows the Commission to appoint an interim monitor.

Participants

*For the Commission: Brendan J. McNamara, Christine Naglieri,
and Catherine M. Sanchez.*

*For the Respondents: Richard Feinstein, Boies, Schiller &
Flexner LLP; Robert Lipstein, Crowell Moring LLP; Christine
Varney, Hogan & Hartson LLP; Dale Collins, Shearman & Sterling
LLP; and Damian Didden, Wachtell, Lipton, Rosen & Katz.*

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COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that 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”), corporations subject to the jurisdiction of the Commission, have agreed to acquire Respondent ChoicePoint Inc., Respondent ChoicePoint Services Inc., and Respondent ChoicePoint Government Services LLC (collectively “ChoicePoint”), corporations subject to the jurisdiction of the Commission, in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

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.

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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. Respondents are, and at all times herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and are corporations whose businesses are in or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

9. Pursuant to an Agreement and Plan of Merger dated as of February 20, 2008 (the “Agreement”), Reed Elsevier proposes to acquire ChoicePoint for approximately \$4.1 billion (the “Acquisition”).

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III. THE RELEVANT MARKET

10. For the purposes of this Complaint, the relevant market in which to analyze the effects of the Acquisition is electronic public records services for law enforcement customers.

11. For the purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKET

12. LexisNexis, a wholly-owned subsidiary of Reed Elsevier, and ChoicePoint are, by a large margin, the two largest providers in the United States of electronic public records services for law enforcement customers. Consequently, the U.S. market for electronic public records services for law enforcement customers is highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”).

13. LexisNexis and ChoicePoint are actual and substantial competitors in the relevant market.

V. ENTRY CONDITIONS

14. New entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 16 below. New entry into the relevant market is a difficult process because of, among other things, the time and cost associated with developing electronic public records services for law enforcement customers and the lengthy period necessary to attain customer acceptance within this customer segment. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

15. Expansion by smaller competitors into the relevant market would not be timely, likely, or sufficient to deter or counteract the

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anticompetitive effects of the Acquisition set forth in Paragraph 16 below. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

VI. EFFECTS OF THE ACQUISITION

16. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between LexisNexis and ChoicePoint for the sale of electronic public records services for law enforcement customers in the United States;
- b. by increasing the likelihood that LexisNexis will exercise market power unilaterally in the U.S. market for electronic public records services for law enforcement customers;
- c. by reducing the merged entity's incentives to improve service or product quality or to pursue further innovation in the U.S. market for electronic public records services for law enforcement customers; and
- d. by increasing the likelihood that law enforcement customers would be forced to pay higher prices for electronic public records services.

VII. VIOLATIONS CHARGED

17. The Acquisition described in Paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The Acquisition described in Paragraph 9, if consummated, would constitute a violation of Section 7 of the Clayton Act, as

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amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of June, 2009, issues its Complaint against said Respondents.

By the Commission.

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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, 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,

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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.

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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

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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

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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. “AutoTrackXP Assets” means:
 - 1. the source code and the object code of those software components and data modules that host or support the execution and required data movements (i.e., “middleware”) for the application known as AutoTrackXP (“the AutoTrackXP Middleware”) and the documentation corresponding to the AutoTrackXP

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Middleware, in each case as existing on the Closing Date;

2. the source code and the object code of the user interface programs known as AutoTrackXP (“the AutoTrackXP User Interface”) and the documentation corresponding to the AutoTrackXP User Interface, in each case as existing on the Closing Date;
 3. a license to third party software used with the AutoTrackXP Software in the Field, excluding commercially available software;
 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;

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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 launched as the commercial product “ChoicePoint CLEAR” on May 28, 2008 (“the CLEAR user Interface”), and the documentation corresponding to the CLEAR User Interface, in each case as existing on the Closing Date;
 2. all Intellectual Property that (i) is embodied by or used in the CLEAR User Interface, or (ii) has claims that cover the CLEAR User Interface or the use thereof, together (“the CLEAR User Interface Intellectual Property”);
 3. a license to third party software that is used with the CLEAR User Interface, excluding commercially available software;
 4. access to all CLEAR 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 the Commission-approved Acquirer is not Thomson Reuters, for a period of two (2) years;
 5. all rights to sue for past infringement or misappropriation of the CLEAR User Interface and the CLEAR User Interface Intellectual Property; and
 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.

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- 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 pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; or (2) an entity approved by the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- V. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain related to the development, marketing, commercialization, distribution, importation, exportation, cost, pricing, supply, sales, sales support, or use of the AutoTrackXP Assets and the Clear Assets.
- W. “Day(s)” means the period of time prescribed under this Order as computed pursuant to 16 C.F.R. § 4.3 (a).
- X. “Direct Cost” means the cost of direct labor and direct material used to provide the relevant assistance or service, *provided, however*, that where the costs associated with the provision of the relevant assistance or service are allocated costs rather than direct costs, then Direct Cost means the amount of cost allocated to the provision of the relevant assistance or service calculated in accordance with reasonable cost allocation methodologies, and, if Thomson

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Reuters is not the Commission-approved Acquirer, any controversy, dispute, or claim to be resolved by an independent arbitrator, whose resolution shall be conclusive and binding upon the parties.

- Y. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- Z. “Effective Date” means the date on which the Acquisition occurs.
- 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 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

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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, of all databases and data collections and all rights therein); (3) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto; (4) all industrial designs and any registrations and applications therefor; (5) all internet uniform resource locators, domain names, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor; (6) all moral and economic rights of authors and inventors, however denominated; and (7) any similar or equivalent rights to any of the foregoing; *provided, however*, that except with respect to the historical data listed on Schedule G to the Software Joint Ownership, Trademark Assignment, and Trademark License Agreement (subject to the terms of use contained therein) of the Purchase Agreement, Intellectual Property does not include rights in and to data or content used or distributed in connection with the Software.

FF. “Interim Monitor” means any monitor appointed pursuant to the relevant provisions of this Order.

GG. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.

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

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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,

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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;
3. all Marketing Materials related to the use of the AutoTrackXP Software in the Field;
4. as existing on the Closing Date, all data and information relating to any of ChoicePoint’s approvals, clearances, certifications, qualifications, licenses, registrations, permits, franchises, product registrations or

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authorizations issued by any federal, state, municipal, or foreign authority, or any third party test house, registrar or certification body, relating to the use of the AutoTrackXP Software in the Field;

5. past and present customer lists for products or services related to the CLEAR User Interface, including the name, address, and relevant contact person of each such customer, a detailed list of each prospective customer of ChoicePoint that has previously received a sales quote for products or services related to the CLEAR User Interface from ChoicePoint including the name, address and relevant contact person of each prospective customer of products or services related to the CLEAR User Interface accompanied by all ChoicePoint quote reports, and all other data and information relating to said customers and ChoicePoint sales activities relating thereto to the extent and in the form such information was provided to Reed Elsevier pursuant to the Acquisition;
6. all vendor lists detailing the name, address, and relevant contact person for each past and present vendor supplying to ChoicePoint products or services related to the CLEAR User Interface;
7. all Marketing Materials for products or services related to the CLEAR User Interface;
8. as existing on the Closing Date, all data and information relating to any of ChoicePoint's approvals, clearances, certifications, qualifications, licenses, registrations, permits, franchises, product registrations or authorizations issued by any federal, state, municipal, or foreign authority, or any third party test house, registrar or certification body, relating to the CLEAR User Interface and the CLEAR User Interface Intellectual Property;

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9. as existing on the Closing Date, all knowhow, goodwill, technology, trade secrets technical information, protocols, quality control information relating to the 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.

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II.**IT IS FURTHER ORDERED** that:

- A. Not later than fifteen (15) Days after the Effective Date, Respondents shall divest the Assets to Be Divested, absolutely and in good faith, to Thomson Reuters pursuant to and in accordance with the Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Thomson Reuters or to reduce any obligations of the Respondents under such agreement), and such agreement, if it becomes the Remedial Agreement related to the Assets to Be Divested, is incorporated by reference into this Order and made a part hereof. If Respondents do not divest the Assets to Be Divested to Thomson Reuters within fifteen (15) Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Assets to Be Divested;

provided, however, that if 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 Respondents that Thomson Reuters is not an acceptable purchaser of the Assets to Be Divested, then Respondents shall immediately rescind the transaction with Thomson Reuters and shall divest the Assets to 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

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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 perform under or comply with the Remedial Agreement shall also constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Remedial Agreement, Respondents shall not, without the prior approval of the Commission, modify any term of the Remedial Agreement or fail to satisfy each condition to the Commission-approved Acquirer's obligation to acquire the Assets to Be Divested, and, if Thomson Reuters is not the Commission-approved Acquirer, the Supplemental Assets (in each case whether or not waived). The terms of the Remedial Agreement shall not be construed to vary from or contradict the terms of this Order.
- C. Respondents shall:
 - 1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information;
 - 2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective

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information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and 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 restrictions on the use of the Confidential Business Information to all Respondents' employees who are involved in the development, distribution, sale, or marketing of the

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Assets to Be Divested and the Supplemental Assets or who may have Confidential Business Information [“Designated Employees”]; and Respondents shall require each Designated Employee to execute an acknowledgment of his or her obligation regarding the Confidential Business Information. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records at the its principal place of business regarding the provision of notification to Designated Employees and shall provide an officer’s certification to the Commission stating that such notification program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Designated Employees.

D. If the Commission-approved Acquirer is not Thomson Reuters:

1. for a period of up to two (2) years from the Closing Date, upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost, such personnel, technical support, assistance, and training to enable the Commission-approved Acquirer to implement the Assets to Be Divested and the Supplemental Assets; and
2. no later than ten (10) days before the Closing Date and for a period of two (2) years from the date the Order becomes final use commercially reasonable efforts (1) to license to the Commission-approved Acquirer the AutoTrackXP Data and the CLEAR Data that the Respondents own or control; (2) to obtain consents 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

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documents, and other information (“Data”) covered by such contracts for use in the provision of Public Records Services in the Field and any redistribution rights to the contributed content to the maximum extent allowable under each such Data contract with Respondents; and (3) in assisting the Commission-approved Acquirer in reaching agreements directly with the vendors or suppliers party to each of the contracts for AutoTrackXP Data and CLEAR Data as promptly as possible, including waiving any exclusivity provisions with such third party, as needed.

3. Respondents shall:

- a. no later than ten (10) days before the Closing Date; (1) provide to the Commission-approved Acquirer a list of all Employees; (2) allow the Commission-approved Acquirer an opportunity to interview any Employee; and (3) allow the Commission-approved Acquirer to inspect the personnel files and other documentation relating to such Employees, to the extent permissible under applicable laws;
- b. (1) not offer any incentive to any Employee to decline providing employee services to the Commission-approved Acquirer; (2) remove any contractual impediments with Respondents, that may deter any Employee from providing employee services to the Commission-approved Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of the Employees to provide employee services to the Commission-approved Acquirer; and (3) not interfere with any Employee providing employee services to the Commission-approved Acquirer; and

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- c. for a period of one (1) year from the date this Order becomes final, not, directly or indirectly, enter into any arrangement for the services of any Employee providing employee services to the Commission-approved Acquirer, unless the services of such Employee have been terminated by the Commission-approved Acquirer without that Employee's consent.
- E. Pending divestiture of the Assets to Be Divested and the Supplemental Assets, Respondents shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Assets to Be Divested and the Supplemental Assets, and to prevent the destruction, removal, deterioration, or impairment of any of the Assets to Be Divested or any of the Supplemental Assets.
- 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

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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;

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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 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

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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 assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

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- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a Divestiture Trustee(s) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the

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Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to 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 shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) Days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) Days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

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1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop 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.

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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

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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 duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee.
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 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)

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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

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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.

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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 within twenty (20) days of such change in address; and
- 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

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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, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on June 1, 2019.

By the Commission.

CONFIDENTIAL APPENDIX I**PURCHASE AGREEMENT**

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

CONFIDENTIAL APPENDIX II**EMPLOYEES**

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

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Reed Elsevier NV, Reed Elsevier PLC, Reed Elsevier Group plc, and Reed Elsevier Inc. (collectively “Reed Elsevier”), and ChoicePoint Inc., ChoicePoint Services Inc., and ChoicePoint Government Services LLC (collectively “ChoicePoint”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Reed Elsevier’s proposed acquisition of ChoicePoint in the U.S. market for electronic public records services to law enforcement customers. Under the terms of the proposed Consent Agreement, Reed Elsevier and ChoicePoint are required to divest assets related to ChoicePoint’s AutoTrackXP and Consolidated Lead Evaluation and Reporting (“CLEAR”) electronic public records services.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an Agreement and Plan of Merger dated February 20, 2008, Reed Elsevier has agreed to acquire ChoicePoint for approximately \$4.1 billion (“Proposed Acquisition”). The Commission’s complaint alleges that the Proposed Acquisition, if consummated, would violate 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, by lessening competition in the market for electronic public record services sold to law enforcement customers in the United States. The proposed

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Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in this market as a result of the Proposed Acquisition.

II. The Parties

Reed Elsevier is a worldwide, leading information services provider and publisher with headquarters in London, Amsterdam, and New York. Reed Elsevier's LexisNexis division provides information and risk management products and services to financial, business, law enforcement, and government customers. LexisNexis's Risk and Information Analytics Group ("RIAG") provides public records services and risk management and information analytics applications designed to assist customers in managing risk through fraud detection and prevention, identity authentication and verification, and background screening. Reed Elsevier reported revenues of , 4.6 billion (\$9.3 billion) for 2007.

ChoicePoint, headquartered in Alpharetta, Georgia, is a leading provider of a variety of services used by customers to manage economic risk. ChoicePoint has four primary service groups: Insurance Services, Screening and Authentication Services, Business Services, and Marketing Services. For 2007, ChoicePoint reported revenues of \$982 million.

III. Electronic Public Records Services to Law Enforcement Customers

Electronic public records encompasses a wide array of public and non-public records about individuals and businesses, including credit header data, criminal records, motor vehicle records, property records, and employment records. Electronic public records service providers such as LexisNexis and ChoicePoint compile these records, either by going directly to the source or by purchasing these records from third parties, and present them to end users via an online, web-based interface.

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Law enforcement customers utilize electronic public records services as an investigatory tool in complex criminal investigations, such as combating terrorism, locating fugitives, and detecting illegal drug transactions. Unlike other consumers of electronic public records services, such as collections agencies who use these services for simple and discrete tasks such as locating an individual, law enforcement customers use electronic public records services to uncover previously unknown information and to generate leads in their investigations. Law enforcement customers, therefore, only work with electronic public records services providers with the most comprehensive, up-to-date, and accurate records available, as deficiencies in the underlying database could cost them a critical lead in an investigation. In addition to demanding the most complete database of electronic public records, law enforcement customers require that the provider have sophisticated search algorithms, sometimes called analytics, that identify and display non-obvious relationships between records.

The relevant geographic market in which to assess the impact of the Proposed Acquisition is the United States. Market participants indicate that successful participation in this market requires an established U.S. sales and support presence. As a practical matter, there are no firms serving non-U.S. customers that a law enforcement customer located in the United States could turn to as an alternative.

The market for electronic public records services to law enforcement customers is highly concentrated, with LexisNexis, primarily through its Accurint for Law Enforcement service, and ChoicePoint, with its AutoTrackXP service, accounting for over 80 percent of this approximately \$60 million market. The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the only two significant suppliers of electronic public records services to law enforcement customers in the United States.

The anticompetitive implications of such a dramatic increase in concentration are buttressed by evidence of intense head-to-head

Analysis to Aid Public Comment

competition that would be lost with the Proposed Acquisition. Law enforcement customers have benefitted from the rivalry between LexisNexis and ChoicePoint in the form of lower prices, improved products, and better service and support. In addition, this fierce competition prompted ChoicePoint to introduce CLEAR -- a new and advanced electronic public records service -- designed specifically for law enforcement customers. Left unremedied, the Proposed Acquisition likely would cause anticompetitive harm by enabling LexisNexis to profit by unilaterally raising the prices of electronic public records services to law enforcement customers, as well as reducing its incentives to innovate and develop new services.

New entry or fringe expansion into the market for the sale of electronic public records services to law enforcement customers sufficient to deter or counteract the competitive effects of the proposed transaction is unlikely to occur within two years. Firms existing in the market would need to improve their software and underlying analytics substantially, increase the breadth and depth of their public records data, and overcome the resistance of many law enforcement customers to switch to a product that lacks the track record of effectively serving the needs of the law enforcement community in order to seriously contend for the customers that currently work with LexisNexis or ChoicePoint. As a result, new entry or fringe expansion sufficient to achieve a significant market impact within two years is unlikely.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's likely anticompetitive effects in the market for electronic public records services to law enforcement customers. The proposed Consent Agreement preserves competition by requiring the divestiture of assets related to ChoicePoint's AutoTrackXP and CLEAR electronic public records services to Thomson Reuters Legal Inc. ("West") within fifteen (15) days after the Proposed Acquisition is consummated.

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The Commission is satisfied that West is a well-qualified acquirer of the AutoTrackXP and CLEAR assets. West has the resources, capabilities, experience, and reputation to ensure that it will be an effective competitor in the market for electronic public records services to law enforcement customers. West, headquartered in Eagan, Minnesota, is a subsidiary of Thomson Reuters, one of the world's leading information service providers to the legal and business community. West already has a large and experienced sales force with existing relationships with many law enforcement agencies which use West's legal research services. With the divested assets, West will be particularly well-situated to replicate ChoicePoint's success and compete against the combined firm immediately after the Proposed Acquisition.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture of the AutoTrackXP and CLEAR assets to West is successful. First, the proposed Consent Agreement requires Reed Elsevier to provide various transitional services such as customer service, billing support, and database and network maintenance for up to two years to enable West to compete against Reed Elsevier immediately following the divestiture. Second, the proposed Consent Agreement ensures that Reed Elsevier will maintain the viability and marketability of the AutoTrackXP and CLEAR assets prior to the divestiture. Finally, the proposed Consent Agreement allows the Commission to appoint an Interim Monitor to ensure that Reed Elsevier fulfills all of its obligations related to the divestiture of the assets.

In order to ensure that the Commission remains informed about the status of the AutoTrackXP and CLEAR assets pending divestiture, and about the efforts being made to accomplish the divestiture, the proposed Consent Agreement requires Reed Elsevier to file periodic reports with the Commission until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute

Analysis to Aid Public Comment

an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF

JAMES B. NUTTER & COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND THE
GRAMM-LEACH-BLILEY ACT SAFEGUARDS RULE

Docket No. C-4258; File No. 072 3108
Complaint, June 12, 2009 – Decision, June 12, 2009

This consent order addresses James B. Nutter & Company's ("JBN") failure to provide reasonable and appropriate security for sensitive information obtained from or about its consumers when making and servicing mortgage loans throughout the United States. According to the complaint JBN failed to: (1) develop, implement, and maintain a comprehensive written information security program; (2) identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information; (3) design and implement information safeguards to control the risks to customer information and regularly test and monitor them; (4) investigate, evaluate, and adjust the information security program in light of known or identified risks; and (5) oversee service providers and require them by contract to implement safeguards to protect respondent's customer information. Additionally, disseminated privacy notices that did not comply with the GLB Privacy Rule. The order requires JBN to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of sensitive consumer information (whether in paper or electronic format) and prohibits JBN from violating any provision of the GLB Safeguards Rule and Privacy Rule.

Participants

For the *Commission*: *Loretta H. Garrison and Alain Sheer.*

For the *Respondent*: *Jonathan Rosen, Shook, Hardy & Bacon, L.L.P.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that James B. Nutter & Company has violated the provisions of the Commission's Standards for Safeguarding