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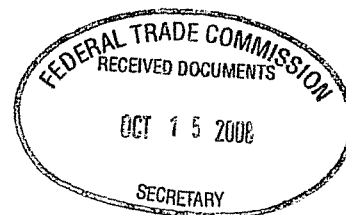
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THE NATIONAL VOICE OF THE PRIVATE INVESTIGATION & SECURITY INDUSTRIES

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October 13, 2008

Donald S. Clark

Office of the Secretary

Federal Trade Commission

Room H-135

600 Pennsylvania Avenue, NW

Washington, DC 20580

Re: Proposed Consent Order

In the Matter of Reed Elsevier and ChoicePoint, FTC File No. 081-0133

Dear Mr. Clark:

I am president of The National Council of Investigation and Security Services, an association representing forty-three state associations and a number of individual professional private investigator firms and security agencies throughout the United States. Our members rely on access services provided, to a great degree, by the above-named respondents. We conduct lawful investigations affecting thousands of American businesses, attorneys, and litigants on a daily basis. I am very concerned that if this acquisition is approved under the consent order without providing relief to private investigators and other consumers of these services, we and our clients will suffer irreparable harm.

Investigators play a vital role in the American legal system serving the courts, businesses, nonprofits and attorneys. A primary function of investigators is to obtain accurate, verifiable information on which courts can rely. Our members must be able to demonstrate that the Robert Jones or John Smith, identified as a potential witness, is the correct party being sought for relevant information. If we expect the courts to make fair judgments, they must have accurate facts from all sides.

The Commission is aware of the vital functions performed by private investigators relying on data that is accessed through Reed Elsevier, ChoicePoint, and their subsidiaries and resellers. Last year these issues were examined by the FTC in a public forum (see "[Security in Numbers: SSNs and ID Theft](#)" December 10-11, 2007). This data is instrumental in efforts to locate witnesses for both civil and criminal trials. This information is also critical to solving mortgage fraud, identity theft, and other crimes that law enforcement is unable to pursue due to limited resources. It can be essential to assist in locating stolen assets, or in finding lost children and pensioners.

The Commission's complaint and consent order was limited to the relevant market for the provision of public records information to law enforcement consumers. It did not include the market for those same services sold to investigators and other private entities. Yet the private market is just as concentrated in the hands of Reed Elsevier and ChoicePoint as it is in the law enforcement market.

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The Commission's complaint charged the following regarding the acquisition of ChoicePoint by Reed Elsevier in the market for electronic public records for law enforcement:

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:

- *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;*
- *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;*
- *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*
- *by increasing the likelihood that law enforcement customers would be forced to pay higher prices for electronic public records services.*

ChoicePoint acquired 50 corporations in the past decade, many of which were suppliers of vital information to private investigators. Although these firms no longer exist, some of the acquired firms were actually founded by private investigators. We are now about to find that we may be closed to future access of information sources.

Lexis-Nexis, Westlaw, and ChoicePoint, businesses that in the past were major suppliers, are not only suppliers of information to private investigators. They also supply to those that conduct pre-employment screening investigations, process servers, debt collectors, and repossessioners.

If the Commission sees fit to protect the interest of government agencies by requiring this divestiture, surely it can act to maintain a competitive market in the private sector. We urge that the acquisition of ChoicePoint not be approved until respondents divest substantial public record services to the private market to a strong entity that can provide appropriate competition.

Very truly yours,

Francie Koehler