

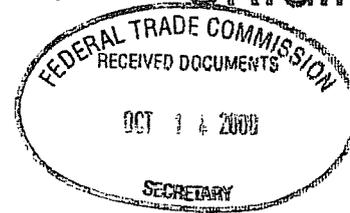


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THE NATIONAL VOICE OF THE PRIVATE INVESTIGATION & SECURITY INDUSTRIES

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October 10, 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:

The National Council of Investigation and Security Services is an association of professional private investigators and firms providing security services throughout the United States. Our members rely to a substantial degree on services provided by the above-named respondents to conduct lawful investigations affecting thousands of American businesses, attorneys, and litigants on a daily basis. If this acquisition is approved under the consent order without providing relief to private investigators and other consumers of these services, they and their 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 John Smith who has been identified as a potential witness is the correct John Smith who can provide 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 that rely 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). Such data are instrumental in efforts to locate witnesses in both civil and criminal trials. It is also critical in solving mortgage fraud, identity theft, and other crimes that law enforcement is unable to pursue due to limited resources. It can be critical to assist in locating stolen assets, or in finding lost children and pensioners.

The Commission's complaint and consent order were 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.

Certainly law enforcement agencies and the Department of Homeland Security have a vested interest in the Commission's decision, but equally so does private sector security. Eighty per cent of our nation's critical infrastructure is presently protected by the private sector, which is more than twice the size of public law enforcement.

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.

All of these factors exist equally for the provision of electronic public records to private entities. Our members are primarily small businesses that have neither the power of the state nor the size of law enforcement agencies in order to bargain effectively with a monopolist entity.

ChoicePoint acquired 50 corporations in the past decade, many of which were suppliers of critical information to private investigators. Several of the acquired firms were actually founded by private investigators. They no longer exist, and 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, but to those that conduct pre-employment and background investigations. And each have divisions that directly compete with us.

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,

Bruce H. Hulme
Legislative Director