

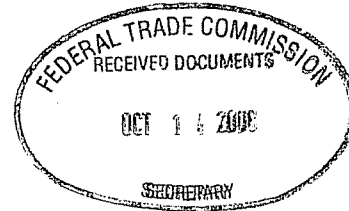
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October 12, 2008

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'm writing on behalf of Edward J. Torres, regarding the proposed consent order and acquisition of ChoicePoint by Reed Elsevier. Our association is comprised of investigators who provide critical services to government agencies, attorneys, state and US courts and others. We rely extensively on services provided by both Reed Elsevier and ChoicePoint and their subsidiaries to assist us in serving these clients.

Over the past several years there has been tremendous consolidation among providers of public records services. This proposed acquisition will further reduce competition in the industry. Although there are several providers of data services in the marketplace, they are resellers of data provided by the respondents.

The Commission's complaint found that this acquisition would be anticompetitive and a violation of antitrust law in the market for the sale of public records information to law enforcement agencies. The same effects would be felt in the market for sale of public records to the private sector.

It is important to have access to data from several suppliers during the conduct of an investigation. Limited resources reduce both the quality and quantity of information available. And our members, many of whom are small businesses, do not have the financial weight to bargain effectively with large entities in a non-competitive environment.

We urge that the Commission not approve the acquisition until respondents can divest themselves of public records services provided to private industry as well as to law enforcement.

Unless an appropriate remedy is offered, our members and their clients will suffer irreparable harm. When competition is reduced, incentives for innovation are reduced, prices rise and service suffers.

Thank you for your consideration.

Edward J. Torres *U*
Private Investigator

Reed Elsevier's Acquisition of ChoicePoint Raises Serious Competitive Concerns

On February 21, 2008, Reed Elsevier announced its \$4.1 billion acquisition of ChoicePoint. As outlined below, this combination raises serious competitive concerns in a market in which Reed Elsevier and ChoicePoint are currently the two dominant players.

Reed Elsevier purchased Seisint, the company that developed Accurint in August 31st, 2004 for \$775 million. ChoicePoint CPS(NYSE) merged with DBT(NYSE) on May 16th, 2000 which represented over 50% of the pre-merger valuation of ChoicePoint. DBT's entire business was their product AutoTrack. The great majority of income of Seisint was Accurint and products that were enhanced from Accurint particularly for Law Enforcement and Homeland Security.

Used millions of times a day, AutoTrack and Accurint are the only competitors to each other serving Law Enforcement, the investigative industries and used to keep commerce safe from fraud.

1. Law Enforcement: Federal, Intel, State, County, City and Task Forces
2. State and Federal Prosecutors and Public Defenders
3. Attorneys
4. Insurance Fraud especially in SIU (Special Investigative Units) departments.
5. Investigative News
6. Collections: Credit Card, Bank Loans, Mortgages, all debt in general.
7. Private Investigators
8. General Business for fraud prevention.

These two systems are the only two online systems that offer one-stop comprehensive public records reports on people and companies: (1) Accurint and (2) AutoTrack. These two products are distinct from other public record databases both in the amount and types of information they provide but also in the way in which these systems collate and link all of these data elements in a single view with interactive links allowing the user to further research a subject matter. These properties make Accurint and AutoTrack the only products capable of serving these industries in this manner.

The very unique capabilities of these two systems are their ability to link the following to a subject that otherwise would not be able to be linked to individuals:

1. Deep address history going back decades.
2. Previous and current assets, who they were purchased from and who they were sold to.
3. Professional Licenses
4. Criminal Records
5. Accident Histories
6. Bankruptcies and Judgments
7. UCC Filings
8. Company and Corporate Affiliations

9. Associates, Previous Associates
10. Relatives
 - a. Relatives of relatives
 - i. Relatives of relative's relatives
11. Neighbors and current residents in neighbors' households

Note: For Law Enforcement, there are many more unique linkages provided.

Note 2: Similar unique capabilities exist for researching companies.

Currently, Accurint is owned by Reed Elsevier and AutoTrack is owned by ChoicePoint. Accordingly, by unifying ownership of the two products, the Reed Elsevier/ChoicePoint combination would create a monopoly in the relevant market. The Reed Elsevier/ChoicePoint combination therefore threatens to destroy the only check on price by combining the two competitors in the market.

The only potential competitor who stands ready to enter the market and has the requisite technical expertise and financial wherewithal to do so is Hank Asher, the inventor and original developer of both Accurint and AutoTrack. It took Mr. Asher years to develop and market Accurint and AutoTrack. Mr. Asher, however, is now barred from entering the market by a non-compete agreement with Reed Elsevier. This non-compete eliminates for a period of time the only viable competitor to the Reed Elsevier/ChoicePoint monopoly.

I. The Reed/ChoicePoint Combination Would Effect a 2-to-1 Merger

- a. Accurint and AutoTrack are products utilized to obtain detailed biographical information about people and companies. These products allow a user to fill in any amount of data they have, as little as that might be, to find the right person (*i.e.*, Linda Smith, 50 mile radius of Chicago, between the age of 50 and 55). Once the person is identified, then all of the other data on that person is immediately available in a linked report.
 - i. These products are utilized by consumers millions of times a day to investigate crime, collect money, investigate lawsuits, find missing relatives for organ donations, reunite families, and other similar purposes.
 - ii. For reports on individuals, these products provide the following types of information to the consumer who purchases a search: deep address history going back decades, previous and current assets, who they were purchased from and who they were sold to, professional licenses, criminal records, accident histories, bankruptcies and judgments, UCC filings, company and corporate affiliations, associates, previous associates, relatives, relatives of

relatives, relatives of relative's relatives, and neighbors and current residents in neighbors' households.

- iii. For reports on businesses, these products additionally provide the following types of information to the consumer who purchases a search: company name variations, corporation filings, business registrations, associated businesses, assets at address (motor vehicles, etc.), properties, and internet domain names.
- b. The market for these products is a cognizable market under antitrust merger analysis.
- i. Although there are minor differences between these products, they are each other's closest substitute.
 1. Accurint and AutoTrack currently compete against one another for contracts with law enforcement agencies, insurance companies, law firms, and other large consumers of the product. They compete for customers and contracts based on price point (whether it be per search pricing or bulk pricing) and functionality (*e.g.*, breadth of data and data analysis tools).
 2. Many job postings in the relevant consumer industries require a candidate's proficiency in *either* Accurint *or* AutoTrack.
 - ii. There are no substitutes for these two products.
 1. Both Accurint and AutoTrack have consistently increased their prices without attracting viable new entrants to the market.
 - a. For example, since 2004, Accurint has increased the price for its most common search (the basic person search) 440%.
 - b. These price increases have not been caused by cost increases.
 2. A number of state agencies have entered sole source contracts for Accurint and AutoTrack because of the unique nature of the product.
- c. There are no other material competitors in the market.
- i. Every major law enforcement agency utilizes Accurint or AutoTrack or both.

- ii. The closet competitors are very small niche players.
 - 1. The small niche players may have one or several data elements but none provide a comprehensive collation of all of the data elements provided by Accurint or AutoTrack in a single view with the ability to further research a subject.
 - 2. Some of what appear to be niche players are products owned by Reed Elsevier or ChoicePoint.
 - a. *E.g.*, Nexis.com
 - 3. Other small players are actually resellers.
 - a. *E.g.*, IRBsearch.com is an Accurint reseller.
- d. There are barriers to entry into the market.
 - i. Cost to develop product.
 - ii. Intellectual know-how/property.
 - 1. The technology behind these products is artificial intelligence based upon complex algorithms. Thus far, Mr. Asher is the only individual who has been able to develop these products.
 - iii. Asher non-compete.

FTC Challenges Reed Elsevier's Proposed \$4.1 Billion Acquisition of ChoicePoint, Inc.

To Preserve Competition, Order Requires Divestiture of Assets Related to ChoicePoint's AutoTrackXP and CLEAR Electronic Public Records Services

The Federal Trade Commission today issued a complaint charging that Reed Elsevier Inc.'s (Reed Elsevier) proposed \$4.1 billion acquisition of ChoicePoint Inc. (ChoicePoint) would be anticompetitive and in violation of the antitrust laws, as it would combine the two largest providers of electronic public record services to U.S. law enforcement customers.

To eliminate the anticompetitive effects of the proposed acquisition, the FTC will require Reed Elsevier to divest assets related to ChoicePoint's AutoTrackXP and Consolidated Lead Evaluation and Reporting (CLEAR) electronic public records services to Thomson Reuters Legal Inc., within 15 days after the proposed acquisition is consummated.

Through its LexisNexis division, Reed Elsevier provides electronic public records services to law enforcement customers in direct competition with ChoicePoint's AutoTrackXP and recently, ChoicePoint's CLEAR, a new and advanced electronic public records service. Together, the two firms account for over 80 percent of the approximately \$60 million U.S. market for the sale of electronic public records services to law enforcement customers.

"The proposed acquisition would have eliminated the intense head-to-head competition between LexisNexis and ChoicePoint that has lowered prices and led to product innovations for a critical law enforcement tool," said David P. Wales, Acting Director of the FTC's Bureau of Competition. "The action announced today ensures that law enforcement customers will continue to benefit from this competition as they attempt to keep pace with increasingly sophisticated criminal activity."

Electronic Public Records Services

Electronic public records services, such as those offered by LexisNexis and ChoicePoint, compile public and non-public records about individuals and businesses, including credit header data, criminal records, motor vehicle records, property records, and employment records. Law enforcement customers use electronic public records services as an investigative tool in complex criminal investigations, such as combating terrorism,

locating fugitives, and detecting illegal drug transactions. When selecting a provider of electronic public record services, law enforcement customers rely on companies with a proven track record of providing accurate and up-to-date public records data with sophisticated search analytics.

The Commission's Complaint

According to the FTC's complaint, Reed Elsevier's proposed acquisition of ChoicePoint would be anticompetitive and in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act, as amended. The FTC states that the relevant product market in which to assess the likely anticompetitive effects of the proposed acquisition is electronic public records services to law enforcement customers. According to the FTC, the U.S. market for electronic public records services to law enforcement customers is highly concentrated, and the proposed acquisition would eliminate substantial competition between the only two significant providers of electronic public records services to U.S. law enforcement customers.

In addition, according to the FTC, the intense rivalry between LexisNexis and ChoicePoint has provided law enforcement customers with lower prices, improved products, and better service and support. This dramatic competition led ChoicePoint to introduce CLEAR – a new and advanced electronic public records service – designed specifically for law enforcement customers. Absent the consent order, the Commission contends, LexisNexis would be able unilaterally to raise the prices of electronic public records services to law enforcement customers and reduce incentives to innovate and develop new services.

Finally, the complaint states that new entry into the market for the sale of electronic public records services to law enforcement customers sufficient to deter or counteract the alleged anticompetitive impact of the proposed acquisition is unlikely to occur within two years.

Terms of the Consent Order

The Commission's consent order settling the complaint is designed to remedy the anticompetitive effects of Reed Elsevier's acquisition of ChoicePoint in the market for electronic public records services to law enforcement customers. The order requires the divestiture of assets related to ChoicePoint's AutoTrackXP and CLEAR to Thomson Reuters Legal Inc. (West) within 15 days of the date the deal is consummated.

The FTC believes West is a well-qualified acquirer of the assets to be divested, in that it has the resources, capabilities, experience, and reputation to ensure it will be an effective competitor in the U.S. market for electronic public records services to law enforcement customers. Headquartered in Eagan, Minnesota, West is a subsidiary of Thompson Reuters, which is 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. With the divested assets, West will be well-situated to compete with Reed Elsevier's LexisNexis.

The consent order contains several provisions designed to ensure that the divestiture to West is successful. First, it requires Reed Elsevier to provide transitional services to West for up to two years to enable West to compete effectively immediately after the divestiture. Second, the order requires that Reed Elsevier maintain the viability and marketability of the AutoTrackXP and CLEAR assets prior to their divestiture to West. Finally, the order allows the FTC to appoint an interim monitor to ensure that Reed Elsevier meets its divestiture obligations, and requires the company to file periodic reports with the Commission until the assets are successfully divested.

The Commission vote to approve the complaint and consent order and place copies on the public record was 4-0. The order will be subject to public comment for 30 days, until October 15, 2008, after which the Commission will decide whether to make it final. Comments should be sent to: FTC, Office of the Secretary, 600 Pennsylvania Ave., N.W., Washington, DC 20580.

The attorneys general's offices in Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Ohio, Pennsylvania, Texas, Washington, and Wisconsin assisted the FTC in its investigation of this matter.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

Copies of the documents related to this matter are available from the FTC's Web site at <http://www.ftc.gov> and the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read "Competition Counts" at <http://www.ftc.gov/competitioncounts>.

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(ChoicePoint.final)
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