

connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 2001 (66 FR 29989). The conference was held in Washington, DC, on June 13, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 9, 2001. The views of the Commission are contained in USITC Publication 3438 (July 2001), entitled Certain Structural Steel Beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan: Investigations Nos. 731-TA-935-942 (Preliminary).

Issued: July 10, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-17662 Filed 7-13-01; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Appointment of Individuals To Serve as Members of Performance Review Boards

**AGENCY:** United States International Trade Commission.

**ACTION:** Appointment of individuals to serve as members of performance review board.

**EFFECTIVE DATES:** July 10, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Micheal J. Hillier, Director of Personnel U.S. International Trade Commission (202) 205-2651.

**SUPPLEMENTARY INFORMATION:** The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB).

Chairman of PRB: Vice-Chairman Deanna Tanner Okun.

Members: Commissioner Lynn M. Bragg, Commissioner Marcia E. Miller, Commissioner Jennifer A. Hillman, Commissioner Dennis M. Devaney, Robert A. Rogowsky, Lyn M. Schlitt, Stephen A. McLaughlin, Eugene A. Rosengarden, Lynn Featherstone, Vern Simpson, Lynn I. Levine, Robert B. Koopman.

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

Issued: July 10, 2001.

By order of the Chairman:

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-17663 Filed 7-13-01; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States v. The Thomson Corporation, Harcourt General, Inc. & Reed Elsevier Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. The Thomson Corporation, Harcourt General, Inc., and Reed Elsevier Inc.*, No. 1:01CV01419. On June 27, 2001, the United States filed a Complaint alleging that The Thomson Corporation's proposed acquisition of the college textbook publishing and computer-based testing businesses of Harcourt General, Inc. from Reed Elsevier Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the defendants to divest textbooks and related ancillary educational materials for thirty-eight college courses and Harcourt's national computer-based testing business. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Civil Task Force, Antitrust Division, Department of Justice, 325 Seventh Street, NW., Suite

300, Washington, DC 20530 (telephone: (202) 616-5935).

**Constance K. Robinson,**

*Director of Operations and Merger Enforcement.*

### United States District Court for the District of Columbia

[Civil Action No: 01-1419 (Antitrust)]

*United States of America, Plaintiff, v. The Thomson Corporation, Harcourt General, Inc. and Reed Elsevier Inc., Defendants*

Filed: June 27, 2001.

### Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

#### I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest any of the Divestiture Assets.

B. "AIMS Business" means Harcourt's Agency Information Management Services business, which provides assistance to state agencies, departments, or other such organizations in the management of the state licensing process, including:

1. All tangible assets that are used exclusively for the AIMS Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the AIMS Business; all licenses, permits and authorizations issued by any governmental organization relating exclusively to the AIMS Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating exclusively to the AIMS Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by the AIMS Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the AIMS Business; all repair and performance records, and all other records relating exclusively to the AIMS Business.

2. All intangible assets that are used exclusively in the AIMS Business and are used in the development, production, servicing, sale, administration, assessment, and

dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the AIMS Business including, but not limited to the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the AIMS Business.

C. "ASI" means all of the assets of defendant Harcourt's wholly-owned subsidiary Assessment Systems, Inc., a Pennsylvania corporation with its headquarters in Bala Cynwyd, Pennsylvania, excluding Harcourt's AIMS Business and State Testing Business, as defined in the proposed Final Judgment, but including the following:

1. All tangible assets that comprise ASI, including research and development activities, all fixed, mobile, and other testing centers listed in Exhibit B of the proposed Final Judgment, any accompanying property rights in real estate or equipment used in any of those testing centers, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with ASI; all licenses, permits and authorizations issued by any governmental organization relating to ASI; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to ASI, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by ASI; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating to ASI; all repair and performance records, and all other records relating to ASI.

2. All intangible assets used in the development, production, servicing,

sale, administration, assessment, and dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation including, but not limited to, test drivers, scheduling software, and the OMEGA, EXPro, and REG2000 software platforms; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating to ASI including, but not limited to, all test item banks, psychometric data, statistical reports of test results, designs of computer-based examinations and testing centers, and the designs of experiments, and the result of successful and unsuccessful designs and experiments; quality assurance and control procedures, including all security measures used in the development, administration, and assessment of computer-based tests and the report of exam results; design tools and simulation capability; and all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees.

D. "College Textbook Products" means all of the college textbooks identified on Exhibit A of the proposed Final Judgment. Each College Textbook Product also includes all ancillary educational materials offered for sale or under development by any subsidiary or division of the defendants that are designed to be specific to a textbook product identified in Exhibit A, including teacher editions, workbooks, notebooks, charts, audio, video, software, any CD-ROM, DVD-ROM, Internet and broadcast components, teacher support and staff development materials, and any other materials in any form, format or media, and also includes:

1. All tangible assets that comprise the College Textbook Products, including research and development activities; all original and digital artwork, film plates, and other reproductive materials relating to the College Textbook Products including, but not limited to, all manuscripts, illustrations, any other content, and any revisions or revision plans thereof in print or digital form; all licenses, permits and authorizations issued by any governmental organization relating to the College Textbook Products; all

contracts, teaming arrangements, agreements, commitments, certifications, and understandings relating to the College Textbook Products including, but not limited to, author permissions and other similar agreements, supply and distribution agreements; all customer lists, contracts, accounts, and credit records, or similar records of all sales and potential sales of the College Textbook Products; all sales support and promotional materials, advertising materials, and production, sales and marketing files relating to the College Textbook Products; at the Acquirer(s)' option, computers and other tangible assets used primarily for the production of the College Textbook Products; and all performance and all other records relating to the College Textbook Products;

2. All intangible assets used in the development, production, servicing, marketing, and sale of the College Textbook Products including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks (registered and unregistered), trade names, service marks, service names, including all titles of existing products comprising the College Textbook Products, but no corporate trademarks or trade names of Thomson or Harcourt; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts relating to the College Textbook Products, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

Defendants shall use their best efforts to facilitate the assignment to the Acquirer(s) of any of the above that defendants presently hold or use pursuant to a license or any other agreement.

E. "Complete ASI Assets" means ASI, the AIMS Business, and the State Testing Business, as defined in this Hold Separate Stipulation and Order.

F. "Divestiture Assets" means the College Textbook Products and the Complete ASI Assets, as defined in this Hold Separate Stipulation and Order.

G. "Harcourt" means defendant Harcourt General, Inc., a Delaware corporation with its headquarters in Chestnut Hill, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Reed Elsevier" means defendant Reed Elsevier Inc., a Massachusetts corporation with its headquarters in Newton, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. "State Testing Business" means only those contracts, agreements, or other understandings between Harcourt and any entity for the development, delivery, or administration of any licensing examinations to any state agencies or departments that are in effect as of the date of the filing of the Complaint in this matter, including:

1. All tangible assets that are used exclusively for the State Testing Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the State Testing Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales relating exclusively to the State Testing Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the State Testing Business; and

2. All intangible assets that are used exclusively in the State Testing Business and are used in the development, production, servicing, sale and assessment of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the State Testing Business including, but not limited to, all item banks, psychometric data, test development

resources, statistical reports of test results, designs of computer-based examinations, the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the State Testing Business.

Provided, however that, to the extent that any of these assets are also employed in the delivery or administration of any tests that are the subject of these contracts, such assets shall not deem to be part of the State Testing Business.

J. "Thomson" means defendant The Thomson Corporation, a foreign corporation with its headquarters in Toronto, Ontario, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

## II. Objectives

The proposed Final Judgment filed in this case is meant to ensure the defendants' prompt divestiture of the College Textbook Products and either ASI or the Complete ASI Assets for the purposes of establishing one or more viable competitors in the college textbook publishing and computer-based testing businesses, to remedy the effects the United States alleges would otherwise result from Thomson's acquisition of certain assets of the Higher Education and Corporate and Professional Services Groups of Harcourt from Reed Elsevier. This Hold Separate Stipulation and Order ensures that, prior to such divestitures, the Divestiture Assets will continue to be economically viable and ongoing business concerns that will remain independent and uninfluenced by the defendants and, further, that competition will be maintained during the pendency of the ordered divestitures.

## III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

## IV. Compliance With and Entry of Proposed Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered

by the Court upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Compliant herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event that: (1) The United States has withdrawn its consent, as provided in Section IV.A above; or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, the parties are released from all further obligations under this Hold Separation Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

## V. Hold Separate Provisions

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, with management, production, operation, marketing, distribution, licensing, or sale of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the production, operation, development, delivery, marketing, distribution, licensing, sale, or editorial content of any products or services with those produced, operated, developed, delivered, marketed, distributed, licensed, or sold under any of the Divestiture Assets. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that: (1) The Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the college textbook publishing and computer-based testing businesses; (2) management of the Divestiture Assets will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing, and pricing information, and decision-making concerning production, operation, development, delivery, marketing, distribution, licensing, sale, or editorial content of products, services, or facilities by or under any of the Divestiture Assets will be kept separate and apart from defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products and services produced, operated, developed, delivered, marketed, distributed, licensed, or sold under the Divestiture Assets, and shall maintain at 2001 or previously approved levels for 2002, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive ongoing businesses, consistent with the requirements of Sections V.A and B of this Hold Separate Stipulation and Order.

E. Defendants shall take all steps necessary to ensure that the Divestiture

Assets are fully maintained in operable and saleable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants' employees with primary responsibility for the production, operation, development, delivery, marketing, distribution, licensing, sale, or editorial content of the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets and be responsible for defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment. In the event such person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further Order of the Court.

Respectfully submitted,

For Plaintiff United States of America  
James D. Villa,  
*D.C. Bar #417471, U.S. Department of Justice, Antitrust Division, Civil Task Force, 325 Seventh Street, NW., Washington, DC 20530, (202) 514-8361.*

For Defendant Thomson Corporation  
Paul L. Yde, Esq.,  
*D.C. Bar #449751, Vinson & Elkins, LLP, The Willard Office Building, 1455 Pennsylvania Ave. NW., Washington, DC 20004-1008, (202) 639-6685.*

For Defendant Harcourt General, Inc.  
Stephen M. Axinn, Esq.,  
John D. Harkrider, Esq.,  
*Axinn, Veltrop & Harkrider LLP, 1370 6th Avenue, 19th Floor, New York, NY 10019, (212) 728-2222.*

For Defendant Reed Elsevier Inc.  
Robert A. Lipstein,  
*D.C. Bar #253724, Lipstein, Jaffe & Lawson, LLP, 1225 I Street, NW., Suite 700, Washington, DC 20005-3914, (202) 296-6655.*

#### Order

*It is so ordered by the Court, this  
\_\_\_\_\_ day of June, 2001.*

United States District Judge

#### Parties Entitled to Notice of Entry of Order

*Counsel for Plaintiff United States of America*

James R. Wade, U.S. Department of Justice, Antitrust Division, Civil Task Force, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

*Counsel for Defendant The Thomson Corporation*

Paul L. Yde, Esq., Vinson & Elkins, LLP, The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004-1008.

*Counsel for Harcourt General, Inc.*

Stephen M. Axinn, Esq., Axinn, Veltrop & Harkrider LLP, 1370 6th Avenue, 19th Floor, New York, NY 10019.

*Counsel for Reed Elsevier Inc.*

Robert A. Lipstein, Esq., Lipstein, Jaffe & Lawson LLP, 1225 I Street, NW., Washington, DC 20005-3914.

#### Final Judgment

*Whereas*, plaintiff, the United States of America ("United States"), filed its Complaint on June 27, 2001, plaintiff and defendants, The Thomson Corporation ("Thomson"), Harcourt General, Inc. ("Harcourt"), and Reed Elsevier Inc. ("ReedElsevier"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And Whereas*, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And Whereas*, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

*And Whereas*, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And Whereas*, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now Therefore*, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed*:

## I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

## II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest any of the Divestiture Assets.

B. "AIMS Business" means Harcourt's Agency Information Management Services business, which provides assistance to state agencies, departments, or other such organizations in the management of the state licensing process, including:

1. All tangible assets that are used exclusively for the AIMS Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the AIMS Business; all licenses, permits and authorizations issued by any governmental organization relating exclusively to the AIMS Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating exclusively to the AIMS Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar

records of all sales and potential sales by the AIMS Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the AIMS Business; all repair and performance records, and all other records relating exclusively to the AIMS Business;

2. All intangible assets that are used exclusively in the AIMS Business and are used in the development, production, servicing, sale, administration, assessment, and dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, design, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the AIMS Business including, but not limited to the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the AIMS Business.

C. "ASI" means all of the assets of defendant Harcourt's wholly-owned subsidiary Assessment Systems, Inc., a Pennsylvania corporation with its headquarters in Bala Cynwyd, Pennsylvania, excluding Harcourt's AIMS Business and State Testing Business, as defined in this Final Judgment, but including the following:

1. All tangible assets that comprise ASI, including research and development activities, all fixed, mobile, and other testing centers listed in Exhibit B, any accompanying property rights in real estate or equipment used in any of those testing centers, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with ASI; all licenses, permits and authorizations issued by any governmental organization relating to ASI; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to ASI,

including supply agreements, all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by ASI; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating to ASI; all repair and performance records, and all other records relating to ASI;

2. All intangible assets used in the development, production, servicing, sale, administration, assessment, and dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation including, but not limited to, test drivers, scheduling software, and the OMEGA, EXPro, and REG2000 software platforms; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating to ASI including, but not limited to, all test item banks, psychometric data, statistical reports of test results, designs of computer-based examinations and testing centers, and the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures, including all security measures used in the development, administration, and assessment of computer-based tests and the reporting of exam results; design tools and simulation capability; and all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees.

D. "College Textbook Products" means all of the college textbooks identified on Exhibit A attached hereto. Each College Textbook Product also includes all ancillary educational materials offered for sale or under development by any subsidiary or division of the defendants that are designed to be specific to a textbook product identified in Exhibit A, including teacher editions, workbooks, notebooks, charts, audio, video, software, any CD-ROM, DVD-ROM, Internet and broadcast components, teacher support and staff development materials, and any other materials in any form, format or media, and also includes:

1. All tangible assets that comprise the College Textbook Products,

including research and development activities, all original and digital artwork, film plates, and other reproductive materials relating to the College Textbook Products including, but not limited to, all manuscripts, illustrations, any other content, and any revisions or revision plans thereof in print or digital form; all licenses, permits and authorizations issued by any governmental organization relating to the College Textbook Products; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings relating to the College Textbook Products including, but not limited to, author permissions and other similar agreements, supply and distribution agreements; all customer lists, contracts, accounts, and credit records, or similar records of all sales and potential sales of the College Textbook Products; all sales support and promotional materials advertising materials, and production, sales and marketing files relating to the College Textbook Products; at the Acquirer(s)' option, computers and other tangible assets used primarily for the production of the College Textbook Products; and all performance and all other records relating to the College Textbook Products;

2. All intangible assets used in the development, production, servicing, marketing, and sale of the College Textbook Products including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks (registered and unregistered), trade names, service marks, service names, including all titles of existing products comprising the College Textbook Products, but no corporate trademarks or trade names of Thomson or Harcourt; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts relating to the College Textbook Products, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

Defendants shall use their best efforts to facilitate the assignment to the Acquirer(s) of any of the above that defendants presently hold or use

pursuant to a license or any other agreement.

E. "Complete ASI Assets" means ASI, the AMS Business, and the State Testing Business, as defined in this Final Judgment.

F. "Divestiture Assets" means the College Textbook Products and the Complete ASI Assets, as defined in this Final Judgment.

G. "Harcourt" means defendant Harcourt General, Inc., a Delaware corporation with its headquarters in Chestnut Hill, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Reed Elsevier" means defendant Reed Elsevier Inc., a Massachusetts corporation with its headquarters in Newton, Massachusetts, its successors and assigns, and subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. "Retained Products" means any product offered for sale or in development by defendants as of the date of the filing of the Complaint in this matter that are not Divestiture Assets.

J. "State Testing Business" means only those contracts, agreements, or other understandings between Harcourt and any entity for the development, delivery, or administration of any licensing examinations to any state agencies or departments that are in effect as of the date of the filing of the Complaint in this matter, including

1. All tangible assets that are used exclusively for the State Testing Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the State Testing Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales relating exclusively to the State Testing Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the State Testing Business; and

2. All intangible assets that are used exclusively in the State Testing Business and are used in the development, production, servicing, sale and assessment of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights,

trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the State Testing Business including, but not limited to, all item banks, psychometric data, test development resources, statistical reports of test results, designs of computer-based examinations, the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the State Testing Business.

Provided, however that, to the extent that any of these assets are also employed the delivery or administration of any tests that are the subject of these contracts, such assets shall not be deemed to be part of the State Testing Business.

K. "Thomson" means defendant The Thomson Corporation, a foreign corporation with its headquarters in Toronto, Ontario, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

### III. Applicability

A. This Final Judgment applies to Thomson, Harcourt, and Reed Elsevier, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendant Thomson shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendant Thomson need not obtain such an agreement from the Acquirer(s).

### IV. Divestitures

A. Defendants are ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of

this Final Judgment by the Court, whichever is later, to divest the College Textbook Products in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one extension of time of up to thirty (30) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the College Textbook Products as expeditiously as possible.

B. Defendants are ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest in accordance with the procedures set forth in this paragraph, either ASI or the Complete ASI Assets to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to up to two extensions of this time period of up to thirty (30) calendar days each, and shall notify the Court in such circumstances. Defendants shall invite bids for both: (1) ASI, as defined in this Final Judgment, as well as (2) the Complete ASI Assets, as defined in this Final Judgment. Defendants shall permit all Acquirers to make an offer to purchase either or both ASI or the Complete ASI Assets. Defendants agree to use their best efforts to accomplish such divestitures as expeditiously as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make such information available to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel responsible for the editorial content of any College Textbook Product identified

in Exhibit A to enable the Acquirer(s) to make offers of employment. In addition, defendants shall provide the Acquirer(s) and the United States information relating to all personnel of ASI or the Complete ASI Assets, as appropriate, including employees, agents, consultants, and independent contractors, to enable the Acquirer(s) to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is for the editorial content of any College Textbook Product listed in Exhibit A, nor interfere with any negotiations by the Acquirer(s) to employ any employee, agent, consultant, or independent contractor of ASI or the Complete ASI Assets, as appropriate.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel responsible for the editorial content of any College Textbook Product identified in Exhibit A and to all personnel of the Complete ASI Assets. Defendants shall permit prospective Acquirers of ASI to make inspections of the physical facilities of ASI, and to have access to any and all environmental, zoning, and other permit documents and information of ASI. Further, defendants shall permit prospective Acquirers of the Complete ASI Assets to make inspections of the physical facilities of the Complete ASI Assets, and to have access to any and all environmental, zoning, and other permit documents and information of the Complete ASI Assets. Defendants shall also permit prospective Acquirers of the Divestiture Assets to have reasonable access to any and all financial, operational, or other documents and information related to the Divestiture Assets that are customarily provided as part of a due diligence process.

F. Defendants shall warrant to all Acquirers of the Divestiture Assets that each asset will be operational on the date of sale. Defendants Reed Elsevier and Harcourt shall make the warrants required under this provision to Thomson at the time of the sale by Reed Elsevier to Thomson of the Harcourt assets identified in Paragraph 10 of the complaint filed in this matter, and shall thereafter have no further obligations under this provision.

G. Defendants shall take no action that will impede in any way the permitting, publication, marketing, sale, development, administration, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no material defects in the

environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets. Defendants Reed Elsevier and Harcourt shall make the warrants required under this provision to Thomson at the time of the sale by Reed Elsevier to Thomson of the Harcourt assets identified in Paragraph 10 of the complaint filed in this matter, and shall thereafter have no further obligations under this provision.

I. Defendant Thomson shall retain the right to use any College Textbook Product listed on Exhibit A to the extent necessary to fulfill the terms of agreements, in effect as of the date this Final Judgment is filed with the Court, with purchasers of the product lines listed on Exhibit A. The Acquirer of any College Textbook Product listed on Exhibit A shall grant defendant Thomson a royalty-free license to continue to use that College Textbook Product to the extent necessary to fulfill the terms of such existing agreements. The Acquirer of any College Textbook Product that defendants currently use, in whole or in part, in any Retained Product, shall grant to defendant Thomson a royalty-free license to continue to use the College Textbook Product to the same extent in the production or sale of the Retained Product.

J. At the option of the Acquirer(s) of ASI and upon commercially reasonable terms, defendant Thomson shall contract with the Acquirer(s) to allow the Acquirer(s) to provide the delivery and administration of the State Testing Business. Such contractual arrangement between defendant Thomson and Acquirer(s) shall continue for the duration of the terms of each state contract, agreement or other understanding included in the State Testing Business. The Acquirer(s) of ASI shall grant to defendant Thomson a royalty-free license to any patents, licenses, or other intellectual property divested pursuant to Section IV.B of this Final Judgment to the extent that such intellectual property is used in the AIMS Business or the State Testing Business as of the date of the filing of the Complaint in this matter. This paragraph shall not apply in the event that defendant Thomson divests the Complete ASI Assets.

K. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire

Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Asset can and will be used by the Acquirer(s) of the College Textbook Products as part of a viable, ongoing college textbook publishing business and by the Acquirer of ASI or the Complete ASI Assets as part of a viable, ongoing computer-based testing business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

(1) Shall be made to an Acquirer (or Acquirers), that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of college textbook publishing in the case of the Acquirer(s) of the College Textbook Products and in the business of computer-based testing in the case of the Acquirer(s) of ASI or the complete ASI Assets; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and Thomson, Harcourt, and/or Reed Elsevier give Thomson, Harcourt, and/or Reed Elsevier the ability unreasonably to raise the Acquirer's or (Acquirers') costs, to lower the Acquirer's or (Acquirers') efficiency, or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

#### V. Appointment of Trustee

A. If defendant Thomson has not divested the College Textbook Products and either ASI or the Complete ASI Assets within the time periods specified in Sections IV.A and B of this Final Judgment, defendant Thomson shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures of the College Textbook Products and the Complete ASI Assets, which are defined herein as the Divestiture Assets. Upon appointment, the trustee may only sell the Complete ASI Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture

Assets. Upon notice to defendant Thomson, the trustee shall have the power and authority to accomplish the divestitures to an Acquirer (or Acquirers) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Section V.D of this Final Judgment, the trustee may hire, at the cost and expense of defendant Thomson, any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee and are reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant Thomson on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendant Thomson and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

E. Defendants Thomson and Harcourt shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants Thomson and Harcourt shall develop financial and other information relevant to such businesses as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or impede the

trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment which may necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

#### VI. Notice of Proposed Divestitures

A. Within two (2) business days following the execution of a definitive divestiture agreement, defendant Thomson or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestitures required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendant Thomson. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in any of

the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendant Thomson and Harcourt, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer(s), and any other potential Acquirer. Defendants Thomson and Harcourt and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendant Thomson and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to defendants' limited right to object to the sale under Section V. C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### **VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

#### **VIII. Hold Separate**

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestitures ordered by the Court.

#### **IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, defendants shall deliver to the

United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the Divestiture assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions that have been taken and all steps such defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Each defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in such defendant's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

D. Defendant Reed Elsevier's obligations under paragraphs A. and B. of this Section shall cease upon completion of its sale to Thomson of the Harcourt assets identified in Paragraph 10 of the Complaint filed in this matter.

#### **X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the

Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy or, at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the United States, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give such defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **XI. No Reacquisition**

Defendant Thomson may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

#### **XII. Retention of Jurisdiction**

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for

further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIII. Expiration of Final Judgment**

Unless the Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

**XIV. Public Interest Determination**

Entry of this Final Judgment is in the public interest.

Date: \_\_\_\_\_  
 Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge

EXHIBIT A

| College course   | Divesture products  |
|--|---|
| Accounting: Financial: Introductory: Graduate .....                              | Pratt, <i>Financial Accounting in an Economic Context</i> (2000) (Thomson)                      |
| Chemistry: Biochemistry: Principles: One Term .....                              | Boyer, <i>Concepts in Biochemistry</i> (1999) (Thomson)   |
| Chemistry: Introductory: Nursing/Allied Health .....                             | Hein, <i>Introduction to General, Organic, and Biochemistry</i> (1997) (Thomson)                |
|  | Lygre, <i>General, Organic, and Biological Chemistry</i> (1995) (Thomson)                       |
| Chemistry: Organic: Introductory: One Term .....                                 | Brown, <i>Introduction to Organic Chemistry</i> (2000) (Harcourt)                               |
| Communication: Communication: Interpersonal Communications .....                 | Alder, <i>Interplay</i> (1998) (Harcourt)   |
|  | Verderber, <i>Inter-Act: Using Interpersonal Communication Skills</i> (1998) (Thomson)          |
|  | Trenholm, <i>Interpersonal Communication</i> (2000) (Thomson)                                   |
| Communication: Communication: Principles .....                                   | Alder, <i>Understanding Human Communication</i> (2000) (Harcourt)                               |
| Communication: Journalism: Reporting .....                                       | Felder, <i>Reporting for the Media</i> (1997) (Harcourt)  |
|  | Lanson, <i>Writing and Reporting the News</i> (1994) (Harcourt)                                 |
|  | Scanlan, <i>Reporting and Writing, Basics for the 21st Century</i> (1999) (Harcourt)            |
| Criminal Justice: Introductory .....   | Inciardi, <i>Elements of Criminal Justice</i> (1996) (Harcourt)                                 |
|  | Inciardi, <i>Criminal Justice</i> (1998) (Harcourt)   |
| Economics: Introductory .....  | Welch, <i>Economics</i> (1998) (Harcourt)   |
| Economics: Microeconomics: Managerial Economics .....                            | Samuelson, <i>Managerial Economics</i> (1998) (Harcourt)  |
|  | Truett, <i>Managerial Economics</i> (1998) (Thomson)  |
| Education: Psychology: Learning and Cognition .....                              | Best, <i>Cognitive Psychology</i> (1999) (Thomson)  |
|  | Medin, <i>Cognitive Psychology</i> (1996) (Harcourt)  |
|  | Matlin, <i>Cognition</i> (1998) (Harcourt)  |
| Environmental Science: Introductory .....  | Raven, <i>Environment</i> (2000) (Harcourt)   |
| Family and Consumer Studies: Nutrition .....                                     | Smolin, <i>Nutrition: Science &amp; Application</i> (2000) (Harcourt)                           |
| Finance: Financial Markets and Institutions: Commercial Bank Management.         | Fraser, <i>Commercial Banking: The Management of Risk</i> (1995) (Thomson)                      |
| Finance: Financial Markets and Institutions: Financial Institutions and Markets. | Kidwell, <i>Financial Institutions, Markets &amp; Money</i> (2000) (Harcourt)                   |
| Finance: Survey .....  | Melicher, <i>Finance, Introduction to Institutions</i> (2000) (Thomson)                         |
| Foreign Languages & Literature: French: Language: Elementary .....               | Magnan, <i>Paroles</i> (1999) (Harcourt)(Harcourt)  |
|  | Siskin, <i>Situations et Contexts</i> (1994) (Harcourt)   |
|  | Rassias, <i>Le Francais Depart Arrivee</i> (1992) (Thomson)                                     |
|  | Rosenthal, <i>Objectif France: Introduction to French</i> (1993) (Thomson)                      |
|  | Rosenthal, <i>Objectif France: Travaux Pratiques</i> (1993) (Thomson)                           |
| Foreign languages and Literature: French: Language: Intermediate .....           | Comeau, <i>Ensemble</i> (all versions and years) (Harcourt)                                     |
| Foreign Language and Literature: French: Literature .....                        | Berg, <i>Litterature francaise</i> (Vol. I) (1980) (Harcourt)                                   |
|  | Berg, <i>Litterature francaise</i> (Vol. II) (1997) (Harcourt)                                  |
| Foreign Languages & Literature: Spanish: Language: Intermediate .....            | Gilman, <i>Horizontes: Cultura Y Literatura</i> (1997) (Thomson)                                |
|  | Gilman, <i>Horizontes: Gramatica Y Conversacioin</i> (1997) (Thomson)                           |
| Foreign Languages & Literature: Spanish: Literature: Literature .....            | Anderson-Imber, <i>Literatura Hispanoamerica</i> (1970) (Harcourt)                              |
|  | Mujica, <i>Texto Y Vida: Introduction a La Literatura Hispanoamerica</i> (1992) (Harcourt)      |
| Geology: History .....   | Wicander & Monroe, <i>Historical Geology: Evolution of the Earth</i> (2000) (Thomson)           |
| Management: Strategic Management: Small Business Management .....                | Hodgetts, <i>Effective Small Business Management</i> (1998) (Harcourt)                          |
| Marketing: Research .....  | McDaniel/Gates, <i>Contemporary Marketing Research</i> (1999) (Thomson)                         |
|  | McDaniel/Gates, <i>Marketing Research Essentials</i> (1998) (Thomson)                           |
| Mathematics: Calculus: General: Reform .....                                     | Ostebee, <i>Calculus from Graphical, Numerical &amp; Symbolic Points</i> (1997) (Harcourt)      |
| Mathematics: Trigonometry .....  | Barnett, <i>Analytical Trigonometry with Applications</i> (1999) (Thomson)                      |
| Music: Applied: Piano/Organ .....  | Mach, <i>Contemporary Class Piano</i> (1997) (Harcourt)   |
| Music: Music Theory: All Other .....   | Benjamin, <i>Music for Analysis: Examples from the Common Practice</i> (1996) (Thomson)         |
| Philosophy: Introductory .....   | Solomon, <i>Introducing Philosophy</i> (1997) (Harcourt)  |
|  | Pojman, <i>Philosophy: the Quest for Truth</i> (1999)(Thomson)                                  |
|  | Pojman, <i>Introduction to Philosophy: Classical and Contemporary Readings</i> (2000) (Thomson) |
|  | Kolak, <i>Experience of Philosophy</i> (1999) (Thomson)   |
|  | Titus, <i>Living Issues in Philosophy</i> (1995) (Thomson)                                      |

## EXHIBIT A—Continued

| College course  | Divesture products  |
|---|---|
| Philosophy: Logic: Logic .....                            | Barcalow, <i>Open Questions: An Introduction to Philosophy</i> (1997) (Thomson)<br>Kalish, <i>Logic</i> (1980) (Harcourt)<br>Bonevac, <i>Simple Logic</i> (1999) (Harcourt)<br>Baum, <i>Logic</i> (1996) (Harcourt)<br>Pine, <i>Essential Logic</i> (1996) (Harcourt)<br>Herrick <i>The Many Worlds of Logic</i> (1999) (Harcourt)<br>Schauer, <i>Philosophy of Law</i> (1996) (Harcourt)                 |
| Philosophy: Philosophy of: Law .....                      | Rowe & Wainright <i>Philosophy of Religion: Selected Readings</i> (1997) (Harcourt)   |
| Philosophy: Philosophy of: Religion .....                 | Rathus, <i>Adjustment and Growth</i> (1998) (Harcourt)<br>Monte, <i>Beneath the Mask</i> (1998) (Harcourt)<br>McAdams, <i>The Person: An Introduction to Personality</i> (1994) (Harcourt)(Harcourt)<br>Mischel, <i>Introduction to Personality</i> (1998) (Harcourt)<br>Reeve, <i>Understanding Motivation and Emotion</i> (1997) (Harcourt)<br>Coren, <i>Sensation and Perception</i> (1999) (Harcourt) |
| Psychology: Adjustment .....                              | Witte, <i>Statistics</i> (1996) (Harcourt)<br>Welkowitz, <i>Introductory Statistics for Behavioral Sciences</i> (1991) (Harcourt)   |
| Psychology: Clinical: Personality .....                   | Rider, <i>Our Voices: Psychology of Women</i> (2000) (Thomson)  |
| Psychology: Development: Motivation and Emotion .....     |   |
| Psychology: Physiological: Sensation and Perception ..... |   |
| Psychology: Research: Statistics .....                    |   |
| Psychology: Social: of Women .....                        |   |

## EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS

| Test center No. | Type        | Address  |
|-----------------|-------------|--|
| 0019 .....      | Flex .....  | DBM-Falls Church Test Center, 3141 Fairview Park Drive, Suite 410, Falls Church, VA 22042.                       |
| 0020 .....      | Flex .....  | DBM/ASI Richmond Center, 9011 Arboretum Parkway, #150, Richmond, VA 23236.                                       |
| 0174 .....      | Lease ..... | New York ASI Assessment Center, 15 East 26th Street, 1st Floor, New York, NY 10010.                              |
| 0176 .....      | Lease ..... | Tarrytown ASI Center, 220 White Plains, 2nd Floor, Tarrytown, NY 10591.  |
| 0179 .....      | Lease ..... | Westbury ASI Center, 1600 Stewart Avenue, Suite 109, Westbury, NY 11590.   |
| 0180 .....      | Lease ..... | Binghamton ASI Center, 49 Court Street/Metro Center, Binghamton, NY 13901.                                       |
| 0182 .....      | Lease ..... | Albany ASI Center, 14 Computer Drive East, 2nd Floor, Albany, NY 12205.  |
| 0183 .....      | Lease ..... | Amherst/Buffalo ASI Center, 385 N. French Road, Suite 104, Amherst, NY 14228.                                    |
| 0184 .....      | Lease ..... | Syracuse ASI Center, 6315 Fly Road, Suite 3, Syracuse, NY 13057.   |
| 0185 .....      | Lease ..... | Rochester ASI Center, 1200-A Scottsville Rd., Suite 397-Floor C, Rochester, NY 14624.                            |
| 0270 .....      | Lease ..... | Boston ASI/Harcourt Learning Center, 745 Boylston Street, Suite #300, Boston, MA 02116.                          |
| 0271 .....      | Flex .....  | Downes Professional Building, 1201 Westford Street, Lowell, MA 01851.  |
| 0272 .....      | Lease ..... | Springfield ASI Center, Tower Square, 1500 Main Street, 25th Floor, Springfield, MA 01115.                       |
| 0273 .....      | Lease ..... | Dartmouth ASI Center, Smith Mill Shops, 331 State Road, Suite D, North Dartmouth, MA 02747.                      |
| 0274 .....      | Lease ..... | Malden ASI Cosmetology Center, Gateway Apartment Building, 14 Summer Street, Malden, MA 02148.                   |
| 0275 .....      | Flex .....  | Mansfield Beauty Academy, 266 Bridge Street, Springfield, MA 01103.  |
| 0277 .....      | Flex .....  | Rob Roy Academy, 150 Pleasant Street, Worcester, MA 01608.   |
| 0330 .....      | Flex .....  | ASI Phoenix/DBM, 2398 E. Camelback Road, Suite 600, Phoenix, AZ 85016.   |
| 0331 .....      | Lease ..... | Tucson ASI Center, 1605 N. Wilmot, Suite 105 B, Tucson, AZ 85712.  |
| 0416 .....      | Lease ..... | Little Rock ASI Assessment, University Tower Building, 1123 S. University, Suite 915, Little Rock, AR 72204.     |
| 0417 .....      | Lease ..... | Springdale ASI Center-Building H, Springdale Business Park, 3291 S. Thompson, Suite 102 B, Springdale, AR 72764. |
| 0418 .....      | Flex .....  | El Dorado, Arkansas.   |
| 0540 .....      | Lease ..... | Sacramento ASI Center, 1300 Ethan Way, Suite 330, Sacramento, CA 95825.  |
| 0541 .....      | Flex .....  | DBM/ASI, 100 Bayview Circle, Suite 5500, Newport Beach, CA 92660.  |

## EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

| Test center No. | Type  | Address  |
|-----------------|-------|--|
| 0542            | Flex  | San Jose ASI Center, 1735 Technology Drive, Suite 150, Career Transition Center, San Jose, CA 95110.                   |
| 0543            | Lease | San Diego ASI Center, Kearny Office Park, Suite 109, 8334 Claremont Mesa Boulevard, San Diego, CA 92111.               |
| 0545            | Lease | Glendale ASI Assessment Center, 213 N. Orange Street, Suite D, Glendale, CA 91203.                                     |
| 0546            | Lease | DBM-Bakersfield Test Center, Ming Office Park, 5500 Ming Avenue, Suite 490, Bakersfield, CA 93309.                     |
| 0547            | Lease | Edgewater Park Plaza, 7700 Edgewater Drive, 600 Building, Suite 602, Oakland, CA 94621.                                |
| 0550            | Flex  | DBM Site/Los Angeles, 6701 Center Drive West, Suite 11011, Los Angeles, CA 90045.                                      |
| 0623            | Lease | Colorado Springs ASI Center, 1045 Garden of Gods Road, Unit F, Colorado Springs, CO 80907.                             |
| 0624            | Lease | Grand Junction ASI Center, Skyline Building, 751 Horizon Court #101, Grand Junction, CO 81506.                         |
| 0625            | Lease | Denver ASI Center, Denver Interplaza, Suite G, 601 S. Broadway, Denver, CO 80209.                                      |
| 0626            | Lease | Pueblo ASI Center, University Center, 41 Montebello, 2nd Floor, Pueblo, CO 81001.                                      |
| 0627            | Flex  | Bayfield Senior High School, 800 County Road 501, Room 103, Bayfield, CO 81122.  |
| 0629            | Lease | Greeley ASI Center, 5754 West 11th Street, #203, Greeley, CO 80634.  |
| 0714            | Lease | Rocky Hill ASI Center, Pavilion-West Shopping Center, 632 Cromwell Avenue, Unit A, Rocky Hill, CT 06067.               |
| 0716            | Flex  | DBM-Stamford Test Center, Drake Beam Morin, One Station Place, 3rd Floor South, Stamford, CT 06901.                    |
| 0805            | Lease | Dover ASI Center, Kays Building—Suite 202, 1012 College Road, Dover, DE 19904.   |
| 0807            | Lease | Wilmington/New Castle ASI Center, New Castle Corporation Common Complex, 2 Reads Way—Suite 212, New Castle, DE 19720.  |
| 0918            | Lease | DC ASI Center, Suite 820, 1000 Vermont Avenue, NW., Washington, DC 20005.  |
| 1055            | Lease | Harcourt/ASI Orlando Center, Harcourt Building, 6277 Sea Harbor Drive, Orlando, FL 32887.                              |
| 1056            | Lease | Boynton Beach ASI Center, Woolbright Professional Building, 2240 Woolbright Road, Suite #403, Boynton Beach, FL 33426. |
| 1057            | Lease | Ft. Lauderdale ASI Center, Oakland Commerce Center, 3317 NW 10th Terrace, Suite 401, Ft. Lauderdale, FL 33309.         |
| 1058            | Lease | Ft. Myers ASI Center, 11691 Gateway Boulevard/Bank of America Building/Suite 200, Ft. Myers, FL 33913.                 |
| 1059            | Lease | Gainesville ASI Center, Northwood Park, 5000 NW 34th Street, Unit #10, Gainesville, FL 32606.                          |
| 1060            | Lease | Jacksonville ASI Center, Centurion Square, Suite #11, 8380 Baymeadows Road, Jacksonville, FL 32256.                    |
| 1061            | Lease | Miami ASI Center, Atrium Office Park, 3900 NW 79th Avenue, Suite 518, Miami, FL 33166.                                 |
| 1062            | Lease | Pensacola ASI Center, Eastgate Plaza, 7143A North 9th Avenue, Pensacola, FL 32504.                                     |
| 1063            | Lease | Tallahassee ASI Center, Capital Circle Commerce Center, 508 Capital Circle SE, Suite D-1, Tallahassee, FL 32301.       |
| 1064            | Lease | Tampa ASI Center, Carrollwood Crossing, 4012 Gunn Highway/Suite 110, Tampa, FL 33624.                                  |
| 1065            | Lease | Hollywood ASI Center, 6363 Taft Street, Suite 101, Hollywood, FL 33024.  |
| 1066            | Lease | St. Petersburg ASI Center, Bay View Centre Building, Suite 250, 11300 4th Street North, St. Petersburg, FL 33716.      |
| 1067            | Lease | Miami 2 ASI Center, 5805 Blue Lagoon Drive—Suite #380, Waterford Building Complex, Miami, FL 33126.                    |
| 1068            | Lease | Daytona Beach ASI Center, Sun Trust Bank Building, 501 N. Grandview Avenue/Suite #205, Daytona Beach, FL 32118.        |
| 1070            | Lease | Lake Mary ASI Center, 100 Technology Park, Suite 165, Lake Mary, FL 32746.   |
| 1072            | Flex  | DBM-Boca Raton Test Center, 777 Yamato Road, Suite 310, Boca Raton, FL 33431.  |
| 1073            | Flex  | DBM-Miami 4 Test Center, 5200 Blue Lagoon Drive, Suite #110, Miami, FL 33126.  |
| 1120            | Lease | Norcross ASI Center, 6500 McDonough Drive, Building E—Suite 5, Norcross, GA 30093.                                     |
| 1121            | Lease | Marietta ASI Center, Cobb Corporate Center, 425 Franklin Road, Suite 525, Marietta, GA 30067.                          |

## EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

| Test center No. | Type   | Address   |
|-----------------|--------|---|
| 1122            | Lease  | Macon ASI Center, 828 Walnut Street, Suite B, Macon, GA 31201.  |
| 1123            | Flex   | Realty Exec., 231 Stephenson Avenue, 2nd Floor Training Room, Savannah, GA 31405.                                     |
| 1124            | Lease  | Augusta ASI Center, Westgate Center Office Park, 2531 Center West Parkway, Suite 232, Augusta, GA 30909.              |
| 1125            | Lease  | Tifton ASI Center, 114 West 12th Street, Suite G, Tifton, GA 31794.   |
| 1128            | Lease  | Marietta North ASI Center, 1279 Kennestone Circle, Suite 100, Marietta, GA 30066.                                     |
| 1236            | Lease  | Honolulu ASI Center, Kapiolani Business Plaza, 1580 Makaloa, Suite 900, Honolulu, HI 96814.                           |
| 1237            | Flex   | Waikloa ASI Center, 68-1845 Waikoloa Shopping Center, Suite 211, Waikoloa Highlands, HI 96738.                        |
| 1238            | Flex   | Kauai Community College, Campus Center Building, Room 214, 3-1901 Kaunaulii Highway, Lihue, HI 96766.                 |
| 1239            | Flex   | Lihikai School, 335 S. Papa Avenue, Building C, Rooms 1&2, Kahula-Maui, HI 96732.                                     |
| 1320            | Lease  | Boise ASI Center, Blackeagle Center, 9376 Overland Road, Boise, ID 83709.   |
| 1321            | Flex   | Tesh, Inc., 3803 Industrial Avenue South, Coeur d' Alene, ID 83814.   |
| 1322            | Lease  | Pocatello ASI Center, Re/Max Building, 812 E. Clark Street, Pocatello, ID 83201.                                      |
| 1440            | Lease  | Springfield ASI Center, Realty Plaza, Suite 301, 3180 Adloff Lane, Springfield, IL 62703.                             |
| 1441            | Lease  | Schaumburg ASI Center, Salem Plaza, 1089 North Salem Plaza, Schaumburg, IL 60194.                                     |
| 1442            | Lease  | Chicago ASI Center, 645 North Michigan Avenue, Room 410, Michigan & Erie, Chicago, IL 60611.                          |
| 1445            | Lease  | Westmont ASI Center, 508 A East Ogden Avenue, Westmont, IL 60559.   |
| 1446            | Flex   | Knox College, Corner of South & West Street, Science-Math Center, Room A-107, Galesburg, IL 61401.                    |
| 1448            | Flex   | DBM-Deerfield Test Center, 520 Lake Cook Road, Suite 200, Deerfield, IL 60015.  |
| 1451            | Flex   | John A Logan College, 700 John Logan Drive, Administrative Building, E-132, Carterville, IL 62918.                    |
| 1541            | Lease  | Evansville ASI Center, 125 N. Weinbach Avenue, Suite 720, Evansville, IN 47711.                                       |
| 1542            | Lease  | Schererville ASI Center, Oak Ridge Center, 142-4 East Highway 30, Schererville, IN 46375.                             |
| 1543            | Lease  | Indianapolis ASI Center, First Floor, Room 170, 9102 North Meridian Street, Indianapolis, IN 46260.                   |
| 1620            | Flex   | Univ Park Holiday Inn, 1800 50th Street, Lucas Room, W. Des Moines, IA 50266.   |
| 1621            | Mobile | Holiday Inn Express, North Cedar Rapids, 1230 Collins Road, Cedar Rapids, IA 52402.                                   |
| 1622            | Mobile | Sioux City Hilton, 707 4th Street, Sioux City, IA 51106.  |
| 1704            | Flex   | DBM-Overland Park Test Center, 7400 West 130th Street, Suite 150, Overland Park, KS 66213.                            |
| 1705            | Flex   | Johnson County Community College, 12345 College Boulevard, CC Building, 2nd Floor, Room 224, Overland Park, KS 66210. |
| 1706            | Lease  | Wichita ASI Center, Building 400, Northrock Business Park, 3450 N. Rock Road, Suite 407, Wichita, KS 67266.           |
| 1707            | Lease  | Topeka ASI Center, 2942 B Wanamaker Drive, Suite #2D, Topeka, KS 66604.   |
| 1708            | Flex   | Hays High School, 2300 East 13th Street, Room 102 Hays, KS 67601.   |
| 1827            | Lease  | Lexington ASI Center, 2365 Harrodsburg Road, Suite B-175, Lexington, KY 40504.  |
| 1828            | Lease  | Louisville ASI Center, 11003 Bluegrass Parkway, Suite 590, Louisville, KY 40299.                                      |
| 1942            | Lease  | Shreveport ASI Center, Harry Patterson Tower, 6007 Financial Plaza, Suite 505, Shreveport, LA 71129.                  |
| 1943            | Lease  | Metairie ASI Center, Hibernia Bank Building, Suite 411, 2201 Veterans Memorial Boulevard Metairie, LA 70005.          |
| 2015            | Flex   | Beal College, 629 Main Street, Bangor, ME 04401.  |
| 2016            | Lease  | Portland ASI Center, 500 Southborough Drive, S. Portland, ME 04106.   |
| 2150            | Lease  | Parkville ASI Center, North Plaza Office Building, #204, 8813 Waltham Woods Road, Parkville, MD 21234.                |
| 2151            | Lease  | Crofton ASI Center, 2137 Epsy Court, Unit #5, Crofton, MD 21114.  |
| 2152            | Flex   | Landover ASI Center, Metro-Plex II, Suite 400, 8201 Corporate Drive, Landover, MD 20785.                              |

## EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

| Test center No. | Type   | Address   |
|-----------------|--------|---|
| 2153            | Flex   | Allegheny Community College, 12401 Willowbrook Road, Room 20, Continuing Education Building, Cumberland, MD 21502.      |
| 2260            | Lease  | Anchorage ASI Center, 2217 E. Tudor Road, Suite 5, Anchorage, AK 99503.   |
| 2261            | Lease  | Fairbanks ASI Center, Eagle Plaza Mall, 418 3rd Avenue, Unit 1B, Fairbanks, AK 99701.                                   |
| 2262            | Lease  | University of Alaska, 11120 Glasier Highway, Juneau, AK 99801.  |
| 2345            | Lease  | Redford ASI Center, Heritage Plaza Shopping Center, 14645 Telegraph Road, Redford, MI 48239.                            |
| 2346            | Lease  | Lansing ASI Center, 6920 S. Cedar, Suite 6, Lansing, MI 48911.  |
| 2347            | Lease  | Grand Rapids ASI Test Center, 4489 Byron Center Drive, Wyoming, MI 49509.   |
| 2348            | Flex   | DBM Troy Test Center, 201 West Big Beaver Road, Suite 450, Troy, MI 48007.  |
| 2353            | Flex   | Marquette High School, 1203 W. Fair Avenue, Room 222, NE entrance, Marquette, MI 49855.                                 |
| 2440            | Lease  | Edina ASI Center, 4550 W. 77th Street, Suite 224, Edina, MN 55435.  |
| 2441            | Lease  | Duluth ASI Center, 718 Medical Arts Building, 324 W. Superior Street, Suite 718, Duluth, MN 55802.                      |
| 2442            | Flex   | University Rochester Center (UCR), 851 30th Avenue SE, Room SH105—Singley Hall, Rochester, MN 55904.                    |
| 2443            | Lease  | Waite Park/St. Cloud ASI Center, Market Place Annex, 256 2nd Avenue South, Waite Park, MN 56387.                        |
| 2444            | Lease  | Moorhead ASI Center, McDonald's Plaza, 501 Main Avenue, Moorhead, MN 56560.   |
| 2445            | Flex   | Marshall High School, 401 South Saratoga Street, Room C20, Marshall, MN 56258.  |
| 2520            | Lease  | Ridgeland ASI Center, Odyssey North Shopping Center, 731 S. Pear Orchard Road, Suite 35, Ridgeland, MS 39157.           |
| 2616            | Lease  | St. Ann ASI Center, 500 Northwest Plaza Office Tower, Suite 813, St. Ann, MO 63074.                                     |
| 2617            | Lease  | Kansas City ASI Center, Broadway Summit Building, 3101 Broadway, Suite 214, Kansas City, MO 64111.                      |
| 2618            | Lease  | Springfield ASI Center, 3046 S. Delaware, Suite K, Springfield, MO 65804.   |
| 2620            | Flex   | DBM—St. Louis Test Center, Clayton Mercantile Center, 8000 Maryland Avenue, Suite 1300, St. Louis, MO 63105.            |
| 2722            | Mobile | The Billings Hotel and Conference Center, 1223 Muldowny Lane, Billings, MT 59101.                                       |
| 2730            | Flex   | Billings Skyview High School, 1775 High Sierra Boulevard, Room #126, Billings, MT 59105.                                |
| 2731            | Flex   | University of Montana, The Lodge Building, Room 231, Arthur & University Avenues, Missoula, MT 59812.                   |
| 2820            | Lease  | Omaha ASI Center, 11635 Arbor Street #100, Omaha, NE 68144.   |
| 2914            | Lease  | Las Vegas ASI Center, Renaissance III, 3230 E. Flamingo Road, Suite #1, Las Vegas, NV 89121.                            |
| 2915            | Lease  | Reno ASI Center, 5250 S. Virginia Street, Suite 255, Reno, NV 89502.  |
| 3020            | Lease  | Lebanon ASI Center, Miracle Mile Plaza #8, Route #4, Lebanon, NH 03766.   |
| 3180            | Lease  | Milburn ASI Center, 15 Bleeker Street, Suite #102, Millburn, NJ 07041.  |
| 3183            | Lease  | Mt. Laurel ASI Center, Princeton Place, 3747 Church 2 <sup>nd</sup> Floor, Mount Laurel, NJ 08054.                      |
| 3184            | Lease  | Cedar Knolls ASI Center, 14 Ridgedale Avenue, Cedar Knolls, NJ 07927.   |
| 3185            | Lease  | Northfield ASI Center, 950 Tilton Road, Northfield, NJ 08225.   |
| 3186            | Lease  | Toms River ASI, Summer Plaza, 1228 Route 27 West, Suite 5, Toms River, NJ 08753.  |
| 3187            | Lease  | Hamilton Township ASI Center, Quakerbridge Plaza, Building 2, 3444 Quakerbridge Road—Rear, Hamilton Township, NJ 08619. |
| 3188            | Lease  | Pompton Plains ASI Center, Scott Center, 449 Route 23 (Southbound), Pompton Plains, NJ 07444.                           |
| 3220            | Lease  | Albuquerque ASI Center, 2815 Broadbent Parkway, NE, Suite C, Albuquerque, NM 87107.                                     |
| 3320            | Lease  | Montgomery ASI Center, East Park Plaza, 140 Mendel Parkway, Montgomery, AL 36117.                                       |
| 3221            | Lease  | Birmingham ASI Center, 216 Acquarius Drive, Suite 305, Homewood, AL 35209.  |
| 3440            | Flex   | DBM—Charlotte Test Center, 8720 Red Oak Boulevard, Suite 301, Charlotte, NC 28217.                                      |

## EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

| Test center No. | Type   | Address  |
|-----------------|--------|--|
| 3441            | Flex   | DBM—Raleigh Test Center, 1121 Situs Court, Suite 100, Raleigh, NC 27606.   |
| 3442            | Lease  | Wilmington ASI Center, Pine Valley II Shopping Center, 3534 S. College Road, Unit D, Wilmington, NC 28412.                           |
| 3443            | Lease  | Raleigh ASI Center, 2801 Blue Ridge Road, Suite 110, Raleigh, NC 27607.  |
| 3444            | Lease  | Statesville ASI Center, City Center Building, 211 S. Center Street, Suite 218, Statesville, NC 28687.                                |
| 3445            | Lease  | Huntersville ASI Center, Northcross Corporate Center, 16419 B Northcross Drive Huntersville, NC 28078.                               |
| 3446            | Lease  | Asheville ASI Center, 1316 D Patton Avenue, Asheville, NC 28806.   |
| 3447            | Lease  | New Bern ASI Center, 3515 Trent Road, #16 Village Square, New Bern, NC 28562.  |
| 3520            | Mobile | Radisson Inn Bismarck, 800 South Third Street, Bismarck, ND 58504.   |
| 3521            | Mobile | Westward Ho Grand Forks, 3500 Gateway Drive, Grand Forks, ND 58206.  |
| 3522            | Mobile | Holiday Inn Minot, 2200 Burdick Expressway, East, Minot, ND 58206.   |
| 3656            | Lease  | Columbus ASI Center, 6555 Busch Boulevard, Suite 101, Columbus, OH 43229.  |
| 3657            | Lease  | Cleveland ASI Center, The Superior Building, Suite 1420, 815 Superior Avenue NE, Cleveland, OH 44114.                                |
| 3658            | Lease  | Cincinnati ASI, Center, Court Street Center, Suite 475 E, 250 West Court Street, Cincinnati, OH 45202.                               |
| 3720            | Lease  | Oklahoma City ADSI Center, Shepherd Mall, Suite 45, 2401 NW 23rd Street, Oklahoma City, OK 73107.                                    |
| 3721            | Lease  | Tulsa ASI Center, Business Common Tech Center, 5115 S. 122nd E. Avenue, Suite 201, Tulsa, OK 74146.                                  |
| 3722            | Mobile | Ardmore Omega Mobile, Best Western/ASI, 6 Holiday Drive, Ardmore, OK 73401.  |
| 3819            | Flex   | Portland ASI/DBM Center, 2 Centerpointe Drive, Suite 100, Lake Oswego, OR 97035.   |
| 3820            | Lease  | Springfield ASI Center, Gateway Market Place, 840 Beltline Road, #206, Springfield, OR 97477.  |
| 3972            | Lease  | Bala Cynwyd ASI Center, 3 Bala Plaza West, 2nd Floor, Bala Cynwyd, PA 19004.   |
| 3973            | Lease  | Pittsburgh ASI Center, Campbell Run Business Center, 500 Business Center Drive, Suite 501, Pittsburgh, PA 15205.                     |
| 3974            | Flex   | DBM—Berwyn Test Center, 1205 Westlakes Drive, Suite 250, Berwyn, PA 19312.   |
| 3976            | Flex   | South Hills Business School, 480 Waupelani Drive, State College, PA 16801.   |
| 3977            | Lease  | Scranton ASI Center, 409 Lackawanna Avenue, Mezzanine Level, Scranton, PA 18503.   |
| 3979            | Mobile | Lemoyne ASI Center, 20 Erford Road, Suite 204, Lemoyne, PA 17043.  |
| 4011            | Lease  | Providence ASI Center, 36 Hemingway Drive, E. Providence, RI 02815.  |
| 4108            | Lease  | Greenville ASI Center, Greengate Office Park, 25 Woodslake Road, Suite 708, Greenville, SC 29607.                                    |
| 4109            | Lease  | Charleston ASI Center, 7410 Northside Drive, Suite 103, North Charleston, SC 29420.  |
| 4110            | Lease  | Columbia ASI Center, Converse Building, 250 Berryhill Road, Suite 210, Columbia, SC 29210.   |
| 4218            | Mobile | Sioux Falls Mobile Test Center, Sheraton Hotel and Convention Center, 1211 N. West Avenue, Sioux Falls, SC 57104.                    |
| 4219            | Mobile | Ramada Inn Aberdeen, 272 6th Avenue SE, Aberdeen, SD 57401.  |
| 4220            | Mobile | Rapid City Mobile Test Center, Holiday Inn Rushmore Plaza Hotel and Conference Center, 505 North Fifth Street, Rapid City, SD 57701. |
| 4322            | Lease  | Nashville ASI Center, Bell Trace Plaza, Suite 106, 5814 Nolensville Pike, Nashville, TN 37211.                                       |
| 4323            | Lease  | Knoxville ASI Center, The Terraces 154-F, Market Place Boulevard, Knoxville, TN 37922.   |
| 4324            | Lease  | Memphis ASI Center, 6073 Mt. Moriah Extended, Appletree Center, Suite 8, Memphis, TN 38115.  |
| 4340            | Lease  | Johnson City ASI Assessment Center, 503 Princeton Road, Suite E, Johnson City, TN 37601.   |
| 4341            | Lease  | Jackson ASI Center, 77B Executive Drive, Jackson, TN 38305.  |
| 4342            | Lease  | Chattanooga ASI Center, 115 Nowlin Lane, Suite 3000, Chattanooga, TN 37421.  |

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

| Test center No. | Type   | Address  |
|-----------------|--------|--|
| 4402            | Lease  | El Paso ASI Center, 10737 Gateway West, Suite 220, El Paso, TX 79935.  |
| 4407            | Lease  | Arlington ASI Center, 2201 North Collins, Suite 230, Arlington, TX 76011.  |
| 4408            | Flex   | Lubbock Christian University, Nursing and Math Building, Room 1, 5601 19th Street, Lubbock, TX 79407.            |
| 4412            | Flex   | Del Mar College-West Campus, Morgan St.-at Old Airport road, Coleman Center, Room 144, Corpus Christi, TX 78404. |
| 4421            | Flex   | DBM—Suite 200 E, 9600 Great Hills Trail, Great Hills Plaza, Austin, TX 78759.                                    |
| 4422            | Lease  | Houston ASI Center, 2424 Wilcrest, Suite 240, Houston, TX 77042.   |
| 4423            | Flex   | Texas Careers, 1015 Jackson Keller Road, Suite 204, San Antonio, TX 78213.                                       |
| 4517            | Flex   | Midvale ASI Center, 7302 South 300 West, Suite B, 301, Midvale, UT 84047.  |
| 4813            | Flex   | Wenatchee Valley College, Eller Fox Building, Rooms 3012 and 3016, Wenatchee, WA 98195.                          |
| 4814            | Lease  | Lacey ASI Center, 719 Sleater-Kinney Road, Suite 124, Lacey, WA 98503.   |
| 4815            | Lease  | Kennewick ASI Center, 1149 N. Edison, Suite B, Kennewick, WA 99336.  |
| 4816            | Lease  | Seattle/Tukwila ASI Assessment Center, 12720 Gateway Drive, Suite 208, Tukwila, WA 98168.                        |
| 4817            | Lease  | Spokane ASI Center, North 505 Argonne Road, Suite 4, Spokane, WA 99212.  |
| 4818            | Lease  | Vancouver ASI Center, First Place Plaza, 12503 SE Mill Plain Road, #130, Vancouver, WA 98684.                    |
| 4819            | Lease  | Yakima, Washington.  |
| 4931            | Lease  | Dunbar ASI Center, 1400 Ohio Avenue, Suite C, Dunbar, WV 25064.  |
| 4932            | Flex   | West Virginia University, Oakland Street, 701 B Allen/Percival Hall, Morgantown, WV 26506.                       |
| 4933            | Flex   | Beckley High School, 410 Stanford Road, Room #D-12, Beckley, WV 25801.   |
| 5050            | Lease  | Elm Grove ASI Center, Enterprise Center, 2nd Floor, 12700 West Blue Mound Road, Elm Grove, WI 53122.             |
| 5051            | Lease  | Madison ASI Center, 582 Grand Canyon Drive, Madison, WI 53719.   |
| 5052            | Lease  | Green Bay ASI Center, 2350 University Avenue, #100, Green Bay, WI 54302.   |
| 5053            | Lease  | Menomonie ASI Center, 2521 South Broadway, Office 101 (lower level), Menomonie, WI 54751.                        |
| 5054            | Flex   | University of Wisconsin Center, Marathon County, Room 070, 518 South 7th Avenue, Wausau, WI 54401.               |
| 5055            | Flex   | DBM—Milwaukee, 18000 West Sara Lane, Suite 300, Brookfield, WI 53045   |
| 5118            | Mobile | Rock Springs Holiday Inn, 1675 Sunset Boulevard, Rock Springs, WY 99999.   |
| 5119            | Mobile | Sharidan Holiday Inn and Convention Center, 1809 Sugurland Drive, Sharidan, WY 99999.                            |
| 5121            | Mobile | Holiday Inn Casper, 300 West "F" Street, Casper, WY 82601.   |

**United States District Court for the District of Columbia**

CASE NUMBER 1:01CV01419

JUDGE: Gladys Kessler

DECK TYPE: Antitrust

DATE STAMP: 06/27/2001

*United States of America, Plaintiff, v. The Thomson Corporation, Harcourt General, Inc., and Reed Elsevier Inc., Defendants*

**Competitive Impact Statement**

The United States, pursuant to section 2(b) of the Antitrust procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final

Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

On June 27, 2001, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by The Thomson Corporation ("Thomson") of the college textbook publishing and computer-based testing businesses of Harcourt General, Inc. ("Harcourt") from Reed Elsevier Inc. ("Reed Elsevier") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Thomson and Harcourt, two of the world's largest publishers of textbooks and other educational materials, are direct

competitors in the development, marketing, and sale of textbooks and print and Internet-based supplemental educational materials used in college courses. For dozens of college courses, they publish textbooks that are close substitutes. Unless the acquisition is blocked, competition in certain markets for college textbooks and ancillary educational materials will be substantially lessened and likely will lead to higher textbook prices and a reduction in the number and quality of ancillary educational materials provided to teachers and students.

Thomson and Harcourt also are direct competitors in the market for nationwide delivery and administration

of certain high stakes computer-based tests used by professional organizations and state and local government agencies for licensure and certification. Further, the Complaint alleges that competition in the market for nationwide delivery and administration of certain high stakes computer-based examinations will be substantially lessened and likely will result in both test sponsors and candidates paying higher prices for such examinations and in a reduction in the quality of test delivery and administration services.

The request for relief in the Complaint seeks: (1) A judgment that Thomson's proposed acquisition would violate section 7 of the Clayton Act; (2) a preliminary and permanent injunction preventing consummation of the merger agreement; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

Shortly before the Complaint was filed, the parties reached a proposed settlement that permits Thomson to complete its acquisition of Harcourt's college textbook publishing and computer-based testing businesses, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. Along with the Complaint, the parties filed a Hold Separate Stipulation and Order and a proposed Final Judgment which establishes the terms of the settlement.

The proposed Final Judgment orders the defendants to divest sixty-eight (68) college textbooks and related ancillary educational materials so that competition in the development, marketing, and sale of textbooks in each of the thirty-eight (38) courses identified in the Complaint will be preserved. In addition, the proposed Final Judgment orders the defendants to make certain divestitures of Harcourt's computer-based testing business, specifically, Harcourt's subsidiary Assessment Systems, Inc. ("the Complete ASI Assets") or ASI, which includes all the assets of Assessment Systems, Inc., excluding the Agency Information Management Services Business and the State Testing Business, as such terms are defined in the proposed Final Judgment. Unless the United States agrees to an extension of time, the defendants must complete all of these divestitures within one hundred and twenty (120) calendar days of the filing of the Complaint, or within five (5) days of the expiration of the sixty-day (60) statutory notice-and-comment period that commenced upon the publication of this Competitive Impact Statement, whichever is later.

If defendant Thomson does not complete the college textbook

divestitures within the appropriate time period, the Court, upon application of the United States, will appoint a trustee selected by the United States to complete the remaining divestitures. Should defendant Thomson fail to complete the computer-based testing business divestitures within the specified time period, the Court, upon application of the United States, will appoint a trustee selected by the United States to accomplish the divestiture of the Complete ASI Assets. The proposed Final Judgment also requires the defendants to take all steps necessary to maintain, operate, and market the divestiture assets as independent and active competitors until the divestitures mandated by the proposed Final Judgment have been accomplished.

The plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and punish violations thereof.

## II. Description of the Events Giving Rise to the Alleged Violation

### A. *The Defendants and the Proposed Transaction*

The Thomson Corporation is a foreign corporation organized and existing under the laws of Canada, with its headquarters in Toronto, Ontario. Thomson publishes textbooks and other educational materials used in higher education under such names as Southwestern, Wadsworth, Heinle & Heinle, and Brooks/Cole. It is one of the world's largest commercial publishers and a leading competitor in many segments of the educational publishing marketplace. In addition, through its subsidiary Prometric, Inc., a Maryland corporation, Thomson offers computer-based testing services, including test delivery and administration, throughout the United States. Prometric is one of the few companies that operates a nationwide network of testing facilities, and/or is offering high stakes computer-based testing delivery and administration services.

Harcourt General, Inc. is a corporation organized and existing under the laws of Delaware, with its headquarters in Chestnut Hill, Massachusetts. Harcourt publishes textbooks and other educational materials under the Harcourt, Saunders, Dryden, and Holt Rinehart Winston imprints. It is one of the world's largest publishing companies and a leading competitor in

many segments of the educational publishing marketplace. In addition, through its subsidiary Assessment Systems, Inc., a Pennsylvania corporation, Harcourt offers computer-based testing services, including test development, delivery, and administration, throughout the United States. Assessment Systems, Inc. is one of the few companies that operates a nationwide network of facilities, and/or is offering high stakes computer-based testing delivery and administration services.

Reed Elsevier Inc. is a corporation organized and existing under the laws of Massachusetts, with its headquarters in Newton, Massachusetts. Reed Elsevier and Harcourt reached in agreement on October 27, 2000, under which Reed Elsevier will purchase all of the assets of Harcourt. On the same date, Reed Elsevier and Thomson reached a separate agreement under which Thomson will acquire from Reed Elsevier: (1) Harcourt's Higher Education Group, which publishes textbooks and print and Internet-based ancillary educational materials in major academic disciplines in higher education, and (2) most of Harcourt's Corporate and Professional Services Group, the latter of which includes Assessment Systems, Inc.

### B. *Product Markets*

#### 1. College Textbook Markets

a. *Description of the Markets.* Publishers market textbooks and ancillary educational materials to professors and in colleges and universities throughout the country. College professors generally select textbooks to serve as the primary teaching material for their courses. Textbooks provide the core written material for a course, serve as the foundation for the professor's overall lesson plan, and establish the framework for class discussions. Professors choose among textbooks that can provide this core content and structure. Students then buy the selected textbooks, typically at college bookstores.

Publishers often attempt to induce a professor to select their textbooks by offering free ancillary educational materials, such as a teacher's edition of the textbooks, audio-visual teaching tools, and copies of the textbooks for teaching assistants. In addition, sometimes students buy the textbooks as part of a discounted package that includes further ancillary educational materials, such as CD-ROMs, workbooks, and study guides.

The Complaint identifies thirty-eight (38) college courses in which Thomson and Harcourt are among the leading competitors in the provision of textbooks and related educational materials. These courses fall primarily within the disciplines of chemistry, communications, finance, foreign languages, philosophy, and psychology. In most of these courses, textbooks are used as a primary teaching material. A small but significant increase in the price of textbooks for a college course—or a small but significant decrease in the number of quality of ancillary educational materials provided with the textbooks—would not cause a significant number of professors or students to switch to alternative products. In addition, used textbooks cannot defeat an increase in the price of new textbooks or a decrease in the supply of ancillaries provided with them. The supply of used textbooks is limited, and professors usually require their students to use the newest edition of a textbook, which, generally, is revised every three to four years.

*b. Harm to Competition as a Consequence of the Merger.* In each of the thirty-eight (38) college textbook markets identified in the Complaint, Thomson and Harcourt compete vigorously by offering textbooks that are close substitutes. Together, they account for a major share of new textbook sales and face significant competition from only a few other publishers. Thus, the proposed acquisition would significantly increase concentration in already high concentrated markets.

Competition between Thomson and Harcourt has resulted in lower prices and has created a significant incentive for each to publish new titles and improve product quality. The proposed acquisition would eliminate this competition, giving Thomson the ability to raise the prices of its or Harcourt's textbooks or reduce the number of quality of ancillary educational materials provided with the textbooks.

In each of the thirty-eight (38) college textbook markets, there is unlikely to be timely entry by any company that would be sufficient to defeat an anticompetitive increase in textbook prices or a decrease in the number or quality of ancillary educational materials or that would spur continuing innovation in the development and production of such products. Successful entry involves a costly and time-consuming process in which a publisher must locate an author qualified to write a new textbook and assemble an editorial staff to edit and develop the textbook, which then must be reviewed by numerous professors prior to its

publication. In addition, effectively selling college textbooks require a trained and knowledgeable sales force to visit and foster relationships with professors at each school to which the textbooks are sold, along with direct mail solicitation and participation in educational conventions. Entry is also impeded by the difficulty in challenging the reputation of successful incumbent textbooks.

The Complaint alleges that the transaction likely will have the following effects:

i. Actual and future competition between Thomson and Harcourt will be eliminated;

ii. Competition generally in the markets for the textbooks and ancillary educational materials for each of the college courses identified in the Complaint will be substantially lessened;

iii. Prices for college textbooks and ancillary educational materials for each of the college courses identified in the Complaint will increase or the number and quality of materials will decline; and

iv. Competition in the development and improvement of college textbooks and ancillary educational materials in each of the college courses identified in the Complaint will be substantially lessened.

## 2. Computer-Based Testing Markets

*a. Description of the Markets.* Many different test sponsors, including professional associations and state and local governments, use computer-based testing for licensing and certification. The creation, delivery, and evaluation of a test involves three stages: (1) Developing test content; (2) delivering and administering tests; and (3) processing and reporting test results. Test sponsors using computer-based testing generally rely upon outside companies to perform each of the steps involved in developing and delivering their tests and evaluating the results.

Test sponsors' examinations may be classified as either "high stakes" or "low stakes." High stakes tests involve those that have very important consequences for the candidates, such as real estate or stockbroker licenses, and certification to assist in surgical procedures, while low stakes tests include practice, training, and self-improvement tests. Test sponsors invariably require a higher level of security during the delivery and administration of high stakes tests than of low stakes tests.

Traditionally, licensing and certification examinations have been administered through paper-and-pencil

tests. However, computer-based testing offers both test sponsors and candidates a number of significant advantages compared to paper-and-pencil testing. Typically, paper-and-pencil tests are given only a few times each year at specified dates and times, while computer-based testing allows test sponsors to offer a test throughout the year on multiple days of the week. Candidates can therefore schedule the test at a convenient time. Such flexible schedule also benefits test sponsors, enabling them to distribute work evenly throughout the year, rather than in concentrated periods surrounding the test dates, thus increasing the efficiency of their business operations.

Computer-based testing also allows the use of more innovative testing features than paper-and-pencil testing. Computer-based tests can be scored instantly, and test questions are more easily updated and improved. Computer-based tests also allow test sponsors to better identify questions that lead to false positives or false negatives. Further, "computer adaptive testing" allows for the test to adapt to the test taker's performance (e.g., correct responses lead to increasingly difficult questions), thereby providing for more effective evaluations.

Test sponsors that offer high stakes computer-based examinations to a nationwide pool of candidates require that the computer-based testing company with whom they contract have a network of testing centers throughout the United States. Test sponsors require that, while examinations are occurring, such testing centers be devoted solely to testing and have adequate security to ensure the integrity of the sponsor's examination and to prevent candidates from cheating. Requisite security measures include having secure computer servers, checking each candidate's identification prior to the examination, and providing proctors to ensure that candidates are not using unauthorized materials during the examination period. Because the proctors' attention and time must be dedicated to monitoring the candidates, they cannot perform other tasks during the examination period. Additional security measures that may be used include video cameras, fingerprint checks, viewing windows, and additional proctors.

Test sponsors using or considering nationwide high stakes computer-based tests would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of delivery and administration services provided through a secure testing center network. As discussed

above, computer-based testing providing numerous advantages over paper-and-pencil testing. As a result, the existence of paper-and-pencil testing cannot defeat an increase in the price of computer-based test delivery and administration given through a nationwide secure testing center network.

Test sponsors also would not self-deliver and administer computer-based tests in response to a small but significant increase in the price of such services. Individual test sponsors do not have the testing volume to justify operating a network of year-round testing centers or purchasing the necessary computer equipment and software to operate such centers. Additionally, computer-based testing administered via the Internet cannot defeat a small but significant increase in the price of delivery and administration services given through a secure testing center network because the security required for high stakes examinations still requires that they be administered in a secure, proctored environment. Currently, the technology is not available to enable test proctoring via the Internet.

b. *Harm to Competition as a Consequence of the Acquisition.* Both Prometric and Assessment Systems, Inc. offer a nationwide network of secure testing centers for the delivery and administration of high stakes computer-based examinations that are close substitutes. They are among the very few firms that compete to provide such a network and account for a significant share of all new contracts.

Competition between Prometric and Assessment Systems, Inc. to provide nationwide high stakes computer-based testing delivery and administration services has resulted in lower prices for test sponsors and candidates, and has created significant incentives for each to maintain and expand its nationwide network of testing centers and improve service quality. The proposed transaction would eliminate this competition, give Prometric the ability to raise the prices for, or reduce the quality of, its high stakes computer-based testing delivery and administration services, and significantly increase concentration in this already highly concentrated market.

If Thomson acquires Assessment Systems, Inc. there is unlikely to be timely entry by any company offering a nationwide network of secure testing sites for the delivery and administration of high stakes computer-based examinations sufficient to defeat an anticompetitive increase in the price of such services. Successful entry requires

a computer-based testing vendor to develop a nationwide network of approximately 200 secure testing centers that meet the requirements for high stakes computer-based testing. The ongoing, day-to-day operation of such a network is costly and time-consuming.

In addition, to successfully enter the market for nationwide delivery and administration of high stakes computer-based tests, a vendor must be able to obtain contracts with enough test sponsors to cover the cost building and maintaining a nationwide network. A new entrant faces a number of hurdles in attempting to obtain the requisite amount of business. First, the duration for contracts for high stakes computer-based testing delivery and administration services typically is several years, and test sponsors generally contract with a single company to provide these services. A computer-based testing vendor attempting to enter the market for delivery and administration services therefore must wait until a contract is near its expiration before the company has an opportunity to bid for it. Second, because there are significant costs involved in switching computer-based test providers, an incumbent provider has a substantial advantage in bidding for such contracts. Third, it is expensive and time-consuming to convert an examination from paper-and-pencil to computer-based format, thus making it difficult for a new entrant to enter the market through conversion of sponsors currently using paper-and-pencil testing. Finally, many test sponsors will contract only with a provider whose testing centers are currently operational, and who has demonstrated an ability to successfully administer high stakes examinations.

The complaint alleges that the transaction likely will have the following effects:

i. Actual and future competition between Thomson and Harcourt will be eliminated;

ii. Competition generally in the market for nationwide computer-based testing delivery and administration services will be substantially lessened;

iii. Prices for nationwide computer-based testing delivery and administration services will increase or the value of services will decline; and

iv. Competition in the development and improvement of nationwide computer-based testing delivery and administration services will be substantially lessened.

### III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects of the proposed acquisition by Thomson of Harcourt's college textbook publishing and computer-based testing businesses from Reed Elsevier and to ensure that adequate competition is maintained in each of the relevant product markets identified in the Complaint.

The proposed Final Judgment requires the defendants to divest the sixty-eight (68) college textbooks identified on Exhibit A to the proposed Final Judgment to an acquirer(s) acceptable to the United States within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or within five (5) days after the expiration of the sixty-day (60) statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement in the **Federal Register**, whichever is later, so as to ensure competition in the market for the development, marketing, and sale of college textbooks and other ancillary educational materials. The United States, in its sole discretion, may agree to an extension of time for one additional thirty (30) day period, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the college textbook assets as expeditiously as possible.

Exhibit A to the proposed Final Judgment specifies the one or more textbooks in each course that must be divested to ensure that there is no reduction in competition in each such course. The college textbook divestitures include all textbooks and ancillary educational materials offered for sale or under development by any subsidiary or division of the defendants that are designed to be specific to a textbook product listed in Exhibit A of the proposed Final Judgment, including all the tangible and intangible assets that constitute the college textbook products identified in the Complaint including, but not limited to, teacher editions, workbooks, notebooks, charts, audio, video, software, any CD-ROM, DVD-ROM, Internet and broadcast components, teacher support and staff development materials, and any other materials in any form, format or media.

The proposed Final Judgment also requires the defendants to divest all of Assessment Systems, Inc. (as previously defined, the "Complete ASI Assets") or that entity excluding Harcourt's Agency Information Management Services and State Testing Businesses (as previously

defined, "ASI") to an acquirer or acquirers acceptable to the United States within one hundred and twenty (120) days after the filing of the Complaint in this matter, or within five (5) days after the expiration of the sixty-day (60) statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement in the **Federal Register**, whichever is later, so as to ensure competition in the market for the nationwide delivery and administration of high stakes computer-based tests. The United States, in its sole discretion, may agree to an extension of time for two additional thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants shall offer for sale to an Acquirer or Acquirers both: (1) ASI, as well as (2) the Complete ASI Assets. The proposed acquirers may then make an offer to purchaser either ASI or the Complete ASI Assets, or both. The United States shall decide which, if any, of the proposed divestitures of the computer-based testing business adequately resolve the competitive harms identified in the Complaint. Defendants agree to use their best efforts to divest either ASI or the Complete ASI Assets as expeditiously as possible.

In the event that ASI also is divested, at the acquirer's or acquirers' option and on commercially reasonable terms, defendant Thomson shall contract with the acquirer(s) to allow the acquirer(s) to provide the delivery and administration of the State Testing Business. Any such contractual arrangement shall continue for the duration of the terms of each currently existing state contract, agreement, or other understanding included in the State Testing Business.

Divestiture of ASI alone shall include all tangible and intangible assets of ASI including, but not limited to, all research and development activities, all fixed, mobile, and other testing centers listed in Exhibit B of the proposed Final Judgment, any accompanying property rights in real estate or equipment used in any of those testing centers, all networking equipment, licenses, permits and authorizations issued by any governmental organization relating to ASI, all patents, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt, technical information, computer software and related documentation including, but not limited to, test drivers, scheduling software, and the OMEGA, EXPro, and REG2000 software platforms, all test item banks, psychometric data,

statistical reports of test results, designs of computer-based examinations and testing centers, and all security measures used in the development, administration, and assessment of computer-based tests and the reporting of exam results. Divestiture of the Complete ASI Assets shall include the foregoing list of tangible and intangible assets, as well as the Agency Information Management Systems and State Testing Businesses.

Until the divestitures occur, the defendants are required to develop and maintain all assets to be divested as independent, ongoing, economically viable, and active competitors, and to continue to fund their development, operations, promotional advertising, sales, marketing, merchandising, and support at existing or already approved levels. If defendant Thomson fails to make the required divestitures within the applicable time periods, the Court will appoint a trustee selected by the United States to effect the remaining divestitures. With regard to the computer-based testing business, should defendant Thomson fail to divest either ASI or the Complete ASI Assets within the requisite time periods, the trustee will effect the divestiture of the Complete ASI Assets. The proposed Final Judgment provides that defendant Thomson will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures. At the end of six (6) months, if the divestitures have not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

The proposed Final Judgment takes steps to ensure that the acquirer(s) of the college textbook assets will be viable and effective competitors in the college textbook publishing. The United States must be satisfied that the acquiring parties of each of the college textbook products have the ability and intention (including the necessary managerial, operational, technical and financial capability) to operate and market the divestiture assets as viable, ongoing businesses, as appropriate. The proposed Final Judgment requires defendants to provide the acquirer(s) and the United States with information relating to the personnel responsible for the editorial content of the college textbooks to be divested, including

employees, agents, consultants, and independent contractors, to enable the acquirer(s) to make offers of employment. The proposed Final Judgment forbids the defendants from interfering with any acquirer's employment negotiations with those employees, and from transferring those employees to new positions prior to the divestitures.

Further, the proposed Final Judgment takes steps to ensure that the acquirer(s) of the computer-based testing assets will be viable and effective competitors in the computer-based testing business. The United States must be satisfied that the acquiring parties of the computer-based testing business have the ability and intention (including the necessary managerial, operational, technical and financial capability) to operate and market the divestiture assets as viable, ongoing businesses. The proposed Final Judgment requires defendants to provide the acquirer(s) and the United States with information relating to all personnel of either ASI or Complete ASI Assets, as appropriate, including employees, agents, consultants, and independent contractors, to enable the acquirer(s) to make offers of employment. The proposed Final Judgment forbids the defendants from interfering with any acquirer's employment negotiations with those employees, and from transferring those employees to new positions prior to the divestitures.

The proposed Final Judgment is designed to maintain the present level of competition in the college textbook publishing market identified in the Complaint in this matter by replacing the competitor eliminated as a result of the merger with one or more that is equally effective. It accomplishes this goal by: (1) Requiring prompt divestitures of the college textbook products so that the acquirer(s) has adequate time to participate in the significant upcoming sales opportunities in colleges and universities; (2) providing the acquirer(s) with an opportunity to employ the personal that are critical to the success of the divestiture assets; and (3) requiring divestiture of all tangible and intangible assets that make up each of those assets.

Further, the proposed Final Judgment is designed to maintain the present level of competition in the computer-based testing market identified in the Complaint in this matter by replacing the competitor eliminated as a result of the merger with one or more that is equally effective. It accomplishes this goal by: (1) Affording the acquirer(s) an opportunity to purchase either ASI or

the Complete ASI Assets, thus ensuring a viable competitor in the computer-based testing market; (2) in the event that ASI alone is divested, and should the acquirer(s) so choose, requiring that defendant Thomson contract with the acquirer of ASI for the delivery and administration of the State Testing Business for the duration of all existing state contracts; (3) providing the acquirer(s) with an opportunity to employ the personnel that are critical to the success of the divestiture assets; and (4) requiring divestiture of all tangible and intangible assets that make up each of those assets.

#### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

#### V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the proposed Final Judgment upon the Court's determination that it is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response to the United States will be filed with

the Court and published in the **Federal Register**.

Written comments should be submitted to: James R. Wade, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States is satisfied that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the college textbook publishing and computer-based testing markets identified in the Compliant and will effectively prevent the anticompetitive effects that the Compliant alleges would result from the proposed acquisition.

#### VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that consent judgments in antitrust cases brought by the United States be subject to a sixty-day (60) comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the compliant including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether

enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). The courts have recognized that the "term 'public interest' \* \* \* take[s] meaning from the purposes of the regulatory legislation." *NAACP v. Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied* 465 U.S. 1101 (1984); *United States v. Waste Management Inc.*, 1985-2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>1</sup> Rather, [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981)). Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the

<sup>1</sup> 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See H.R. 93-1463*, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S.C.C.A.N. 6535, 6538.

Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>2</sup>

A proposed consent decree is an agreement between the parties that is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

*United States v. Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'"<sup>3</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America

Dated: June 27, 2001.

Respectfully submitted,  
James D. Villa,  
(D.C. Bar #417471),

<sup>2</sup> *United States v. Bechtel*, 648 F.2d at 666 (emphasis added) (internal citations omitted). See *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

<sup>3</sup> *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (quoting *Gillette*, 406 F. Supp. at 716, other citations omitted); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—RXHUB LLC

Notice is hereby given that, on May 14, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), RxHub LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are AdvancePCS, Dallas, TX; Express Scripts, Inc., Maryland Heights, MO; and Merck-Medco Managed Care, L.L.C., Franklin Lakes, NJ.

The nature and objectives of the venture are the development and operation of an electronic prescription and information routing service for the purpose of facilitating error-free prescription benefit communications.

#### Constance K. Robinson,

*Director of Operations, Antitrust Division.*

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369, 370, 413, and 414]

#### Duke Energy Corporation, McGuire, Units 1 and 2, and Catawba, Units 1 and 2; Notice of Receipt of Application for Renewal of Facility Operating License Nos. NPF-9, NPF-17, NPF-35, and NPF-52 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission has received applications from Duke Energy Corporation, dated June 13, 2001, filed pursuant to section

103 of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54 for renewal of Operating License Nos. NPF-9, NPF-17, NPF-35, and NPF-52, which authorize the applicant to operate McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, respectively. The McGuire nuclear facility is located 17 miles north-northwest of Charlotte, NC, in Mecklenburg County. The current operating licenses for McGuire, Units 1 and 2, expire on June 12, 2021, and March 3, 2023, respectively. The Catawba nuclear facility is located 18 miles southwest of Charlotte, NC, in York County. The operating licenses for Catawba, Units 1 and 2, expire on December 6, 2024, and February 24, 2026, respectively. All four Duke Energy Corporation nuclear units are four-loop pressurized-water reactors designed by Westinghouse. The acceptability of the tendered applications for docketing and other matters, including an opportunity to request a hearing will be the subject of a subsequent **Federal Register** notice.

Copies of the applications are available electronically for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMSPublic Electronic Reading Room is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>. In addition, the applications are available on the NRC web page at <http://www.nrc.gov/NRC/REACTOR/LR/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdrr@nrc.gov](mailto:pdrr@nrc.gov).

The staff has verified that copies of the license renewal applications for the McGuire and Catawba nuclear stations have been provided to the J. Murrey Atkins Library in Charlotte, North Carolina, and to the York County Library System in South Carolina.

Dated at Rockville, Maryland, the 10th day of July 2001.

For the Nuclear Regulatory Commission,  
**Christopher I. Grimes,**  
*Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

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