



# Department of Justice

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AT  
(202) 616-2771  
TDD (202) 514-1888

**JUSTICE DEPARTMENT AND STATE ATTORNEYS GENERAL REVISE  
THOMSON/WEST MERGER SETTLEMENT**

**Governments Ask Court to Enter Revised Settlement**

WASHINGTON, D.C. -- The Justice Department and six State Attorneys General have asked a federal court to approve a revised settlement in a merger case involving two of the nation's largest legal publishers--Thomson Corp. and West Publishing Co.

The revised settlement, submitted late yesterday in U.S. District Court in Washington, D.C., now requires the newly-formed company to charge lower fees to competing firms that want to provide publications using the widely-relied upon West page numbering system.

The Department and Attorneys General from California, New York, Illinois, Massachusetts, Washington, and Wisconsin said that the court should approve the revised consent decree because it remedies any harms that might have occurred from the merger. In its original consent decree, agreed to last June, the Department required a total divestiture of 50 primary and secondary law products--including major flagship products, such as U.S.C.S. and Supreme Court Reporter. Also, the consent decree contains protections to preserve competition in the comprehensive online legal services market.

"This revised settlement makes a good deal even better," said Joel I. Klein, Acting Assistant Attorney General in charge

of the Antitrust Division. "The reduced license fee to use West's page numbering system should encourage entry into important markets, like CD-ROMs--an emerging electronic form of legal publishing."

Klein added that the federal and state governments and the merging parties listened to the public comments and agreed to changes to address them. Thomson concurred in the revision.

At the same time, the U.S. filed a motion to oppose Lexis-Nexis' request to intervene in the case. Lexis-Nexis, a competitor, is a division of a \$5.8 billion Anglo-Dutch publishing conglomerate, Reed-Elsevier. In its motion, the government said that an antitrust case is not the place for a competitor to pursue its private interests. It also opposed a motion of Lexis-Nexis and others to participate as friends of the court noting that all interested parties already have had the opportunity to inform the court of their views through the public comment process.

Further, the Department and the State Attorneys General opposed Lexis-Nexis' objections to the consent decree. The government court filing dismissed as "unfounded" claims that the proposed decree would interfere with Lexis' contract rights or impair the Auto-Cite product distributed through Lexis.

In addition to seeking approval of its revised agreement, the Department and the State Attorneys General filed detailed responses to the public comments the Department received during the Tunney Act period.

The federal and state governments said that broader divestitures were not necessary to remedy the competitive harm that resulted from the merger, and that requiring Thomson to

offer licenses to use its numbering system will encourage new entry and benefit consumers.

The governments' filing also explained how the decree operates, interpreting some of its provisions, and clarified some aspects of the decree some commentators thought were ambiguous. In particular, the clarifications indicated that the license fee for print publications would be paid by the licensee in the year the book is first printed, and would need only be paid by the final publisher, not by intermediate information providers.

On June 19, 1996, an antitrust suit was filed opposing the merger of Thomson and West. At the same time, the Department and the State Attorneys General announced a settlement with the two companies that addressed the competitive harms resulting from the merger. The complaint, filed in U.S. District Court Washington, D.C. alleged that the merger, as originally structured, would lessen competition in several specific markets for legal publications.

Thomson, headquartered in Toronto, Canada, owns several major legal publishing companies in the United States. West, headquartered in Eagan, Minnesota, is the largest publisher of enhanced primary law materials and related research tools in the U.S. Prior to the merger, Thomson and West published numerous competing legal publications, including the only two annotated United States Codes and the only two enhanced U.S. Supreme Court reporters.

Some of the products that will be divested under the settlement are: U.S. Code Service; U.S. Reports, Lawyers' Edition; Deering's Annotated California Code; New York Consolidated Laws Service; and Auto-Cite, a citation system

currently licensed by Thomson to Lexis-Nexis, for its on-line service.

To ensure that each divested product will be sold as a viable, ongoing line of business, Thomson is required to divest related production assets in addition to its rights to publication titles, and to allow the purchaser to seek to hire employees who have been working on the products. The revised settlement is subject to court approval.

The settlement requires Thomson to license openly to any third party for a fee the right to use the pagination of individual pages in West's National Reporter System. The new fee schedule, disclosed in Monday's filing, is significantly lower than the one in the initial proposed decree. The first year rate for a new entrant is four cents rather than nine cents per thousand characters, and it increases gradually over seven years, rather than three years. The new top rate is nine cents rather than 13 cents.

West has long claimed a copyright in the internal pagination of its case reporter system. The settlement states expressly that it should not be read to suggest that the Department believes that a license is required for use of such pagination. Indeed, in other ongoing litigation, the Department has filed amicus curiae briefs arguing the position that no license is required for star pagination.

The settlement also states that the parties agree that the license option provided for in the decree should have no impact whatsoever on the resolution of such copyright cases.

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