

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

PEARSON PLC,)
PEARSON EDUCATION INC.,)
REED ELSEVIER PLC,)
REED ELSEVIER NV, and)
HARCOURT ASSESSMENT INC.,)

Defendants.)

CASE NO.:

JUDGE:

08 0143

DECK TYPE: Antitrust

DATE STAMP:

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 ("Hold Separate"):

A. "Pearson" means Defendants Pearson plc, a U.K. corporation with its headquarters in London, England, and Pearson Education Inc., a Delaware corporation with its headquarters in Upper Saddle River, New Jersey, and includes their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Reed Elsevier" means Defendants Reed Elsevier PLC, a U.K. corporation with its headquarters in London, England, Reed Elsevier NV, a Dutch corporation with its headquarters in Amsterdam, Netherlands, and Harcourt Assessment Inc., ("Harcourt") a New

York corporation with its headquarters in San Antonio, Texas and includes their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Pearson Clinical Assessments” means the Pearson’s Clinical Assessment business, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Harcourt Clinical Assessments” means the Harcourt’s Clinical division, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Divestiture Assets,” for the purpose of this Hold Separate, means: (1) Reed Elsevier’s Adaptive Behavior Assessment System (“ABAS”) first- and second-edition titles, incorporating the Downward Extension of the ABAS, and Reed Elsevier’s ABAS Second Edition Intervention Planner (collectively “ABAS Assets”); (2) Pearson’s Comprehensive Assessment of Spoken Language (“CASL Assets”); (3) Pearson’s Oral and Written Language Scales (“OWLS”), including the Oral Expression and Listening Comprehension Scales, the Written Expression Scale, and the OWLS second edition, which is under development (collectively “OWLS Assets”); (4) Reed Elsevier’s Clinical Evaluation of Language Fundamentals (“CELF”) including the first-, second-, third-, and fourth-edition titles, the CELF Screener first-, second-, third-, and fourth-edition titles, the CELF Preschool first-, and second-edition titles, the CELF Spanish first-, second-, third-, and fourth-edition titles, and the CELF Spanish Preschool, which is under development; excluding however, the Retained CMS and

WMS Content (collectively “CELF Assets”); and (5) Reed Elsevier’s Emotional Assessment System, (“EAS”) which is under development (“EAS Assets”).

The Divestiture Assets include:

1. all tangible assets that comprise each of the Divestiture Assets including, but not limited to, all historic and current research data and activities and development activities relating to the Divestiture Assets; all original and digital artwork, film plates and other reproductive materials relating to the Divestiture Assets including, but not limited to, all manuscripts, illustrations, any other content, and any revisions or revision plans thereof in print or digital form; all finished inventory of the Divestiture Assets including, but not limited to, all examination kits, manuals, test booklets, record forms, and response booklets; all contracts, agreements, commitments, certifications, and understandings relating to the Divestiture Assets, including, but not limited to, publishing agreements, author agreements, research agreements, author permissions and other similar agreements, supply and distribution agreements for the Divestiture Assets; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales of the Divestiture Assets; all sales support and promotional materials, advertising materials, and production, sales and marketing files, and all other records relating to the Divestiture Assets;
2. all intangible assets used in the development, production, servicing, sale and distribution of each of the Divestiture Assets, including, but not limited to, all patents, licenses and sublicenses, adaptation licenses, intellectual property,

copyrights, contract rights, trademarks (registered and unregistered), trade names, service marks, and service names relating to the Divestiture Assets, but excluding corporate-level trademarks of Pearson and Harcourt; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, scoring rules, scoring algorithms, and specifications for materials relating to the Divestiture Assets; all quality assurance and control procedures, design tools and simulation capability relating to the Divestiture Assets; all manuals and technical information used for any purpose relating to the Divestiture Assets or that Defendants provide to their own employees, customers, suppliers, agents or licensees for use in relation with the Divestiture Assets; and all other intangible research data concerning historic and current research and development efforts relating to the Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

3. the OWLS Assets also specifically include all tangible assets relating to the development of the OWLS second-edition titles including, but not limited to, all research data and development activities; all tryout and standardization easels, administration materials, record forms, tryout data, standardization data, and data for reliability and validity studies;
4. the EAS Assets also specifically include all tangible and intangible assets relating to the development of the EAS including, but not limited, to all research data and development activities; all tryout and standardization easels, administration

materials, record forms, tryout data, standardization data, and data for reliability and validity studies; and all algorithmic data including, but not limited to, data relating to item banking, continuous item rotation, item analysis, item calibration, norming, test equating, scale development, computer-based testing, and computer-adaptive testing; and all applications of Sampling Theory, the Generalized Graded Unfolding model, Generalizability Theory model, Structural Equation model, and other Item Response Theory models;

5. a royalty-free license to the Acquirer(s) of the ABAS Assets and CELF Assets to use the Harcourt corporate trademark and trade name for the sole and limited purpose of distributing finished inventory of the ABAS Assets and CELF Assets;
6. at the option of the Acquirer(s) of the ABAS Assets and CELF Assets, a non-exclusive license to distribute the Scoring Assistant Software for use with the ABAS Assets and CELF Assets; and in the event that the Acquirer exercises such option, the Defendants shall provide to the Acquirer(s) of the ABAS Assets and CELF Assets all technical information and support necessary for the distribution and administration of the Scoring Assistant Software;
7. a royalty-free license to the Acquirer of the CASL Assets and OWLS Assets to use the Pearson corporate trademark and trade name for the sole and limited purpose of distributing finished inventory of the CASL Assets and OWLS Assets;
8. at the option of the Acquirer of the CASL Assets and OWLS Assets, a non-exclusive license to distribute the ASSIST Software for use with the CASL Assets and OWLS Assets; and in the event that the Acquirer exercises such option, the

Defendants shall provide to the Acquirer of the CASL Assets and OWLS Assets all technical information and support necessary for the distribution and administration of the ASSIST Software; and

9. a license to the Acquirer of the CELF Assets to use the Retained CMS and WMS Content to market, sell or distribute any tests produced by the CELF Assets.

F. “Acquirer” or “Acquirers” means the entity or entities to whom Defendants divest the Divestiture Assets.

G. “Scoring Assistant Software” means Reed Elsevier’s software for computerized scoring of individually-administered standardized norm-referenced comprehensive clinical tests (“clinical tests”) to assist test administrators including, but not limited to, software related to scoring of test results; tracking test scores and test history; raw-to-derived score conversion; score interpretation; outcomes analysis and reporting capabilities; problem identification and eligibility determination; discrepancy analysis; and intervention recommendations.

H. “ASSIST Software” means Pearson’s Automated System for Scoring and Interpreting Standardized Tests and encompasses software for computerized scoring of clinical tests to assist test administrators including, but not limited to, software related to scoring of test results; tracking test scores and test history; raw-to-derived score conversion; score interpretation; outcomes analysis and reporting capabilities; problem identification and eligibility determination; discrepancy analysis; and intervention recommendations.

I. “Licensed-Back ABAS Content” means the two hundred and forty one (241) ABAS items described in Exhibit A that, as of the filing of the Complaint in this matter, are also employed in the marketing, sale, and distribution of Reed Elsevier’s Bayley Scales of Infant and

Toddler Development second- and third-edition titles.

J. “Retained CMS and WMS Content” means the fifty (50) Children’s Memory Scale (“CMS”) and Wechsler Memory Scale (“WMS”) items that, as of the filing of the Complaint in this matter, are also employed in the marketing, sale, and distribution of the CELF Assets appearing as the Number Repetition 1 (15 items) and Familiar Sequences 1 (12 items) subtests of the CELF-4, which are borrowed from the Numbers and Sequences CMS subtests, respectively, and Number Repetition 2 (15 items) and Familiar Sequences 2 (8 items) subtests of the CELF-4, which are borrowed from the Digit Span and Mental Control WMS subtests, respectively.

II. Objectives

The proposed Final Judgment is meant to ensure Defendants’ prompt divestitures of the Divestiture Assets for the purpose of preserving viable competition in the development and sale of individually-administered standardized norm-referenced comprehensive clinical tests to remedy the anticompetitive effects that the United States alleges would otherwise result from the Defendants’ merger. This Hold Separate will ensure that until the divestitures required by the proposed Final Judgment have been accomplished, Pearson Clinical Assessments and Harcourt Clinical Assessments will continue to be operated as separate, independent, economically viable, and ongoing competitive businesses, independent from, and uninfluenced by, their common ownership; that competition between Pearson Clinical Assessments and Harcourt Clinical Assessments will be maintained until such divestitures are completed; and that the Divestiture Assets will be preserved and maintained.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action, and Defendants waive all objections to the Court's exercise of personal jurisdiction over Defendants in this action and to the propriety of venue in the United States District Court for the District of Columbia.

IV. Compliance with and Entry of the Proposed Final Judgment

A. The parties stipulate that the proposed Final Judgment in the form attached hereto as Exhibit A may be filed with the Court, and that, upon the motion of any party or upon the Court's own motion, it may be entered at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), 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 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 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 Complaint herein before the Court has signed this Hold Separate.

D. This Hold Separate 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: (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, 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, then the parties are released from all further obligations under this Hold Separate, and the making of this Hold Separate 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 they 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 Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate Pearson Clinical Assessments and Harcourt Clinical Assessments as independent, ongoing, economically viable competitive businesses, with management, development, sales, and marketing held entirely separate, distinct and apart from those of each other as well as those of other operations of Defendants. Defendants shall take all steps necessary to ensure that Pearson Clinical Assessments and Harcourt Clinical Assessments shall preserve, hold, and continue to operate the Divestiture Assets as ongoing, economically viable, and active business concerns and shall operate each Divestiture Asset as a viable competitor in their respective individually-administered standardized norm-referenced comprehensive clinical tests markets. Defendants shall take all steps necessary to ensure that Pearson Clinical Assessments and Harcourt Clinical Assessments shall not coordinate with one another regarding the performance of decision-making

functions, including the development, production, revision, sale, marketing, and pricing or any other terms of sale of any products of the Divestiture Assets. Within twenty (20) days after the entry of this Hold Separate, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate.

B. Defendants shall take all steps necessary to ensure that (1) management of the Divestiture Assets by Pearson Clinical Assessments and Harcourt Clinical Assessments will not be influenced by the Defendants; and (2) the competitively sensitive sales, marketing and pricing information, and decision-making by Pearson Clinical Assessments and Harcourt Clinical Assessments concerning production, development, marketing, licensing, editorial content or sales of products by or under any of the Divestiture Assets will be kept separate and apart from Defendant's other operations.

C. Defendants shall use all reasonable efforts to enable Pearson Clinical Assessments and Harcourt Clinical Assessments to develop, maintain, and increase the sales and revenues of, the products and services produced, operated, developed, updated, delivered, marketed, distributed, licensed, or sold under the Divestiture Assets, and shall maintain at 2007 or previously approved levels for 2008, whichever are higher, all support and operational services relating to warehousing, printing, order processing, accounting, promotions, advertising, sales, customer service, technical assistance, marketing, merchandising, distribution and delivery for the Divestiture Assets.

D. Defendants shall take all steps necessary to ensure that Pearson Clinical Assessments and Harcourt Clinical Assessments fully maintain the Divestiture Assets in operable and saleable condition at no less than their current levels of support, as of the filing of the

Complaint in this matter, including inventory maintenance, and shall maintain and adhere to normal sales, development, updating, and support schedules for the Divestiture Assets.

E. Defendants shall enable Pearson Clinical Assessments and Harcourt Clinical Assessments to continue to fund, develop, and update the Divestiture Assets at no less than previously approved levels of funding and resources, and as they would have been funded, developed, and updated absent the required divestitures in accordance with the terms of the proposed Final Judgment.

F. Defendants shall provide sufficient working capital and lines and sources of credit to enable Pearson Clinical Assessments and Harcourt Clinical Assessments to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing concerns, consistent with the requirements of Sections V (A), (B), (D), and (E) of this Hold Separate.

G. 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.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets and shall take all steps necessary to ensure that Pearson Clinical Assessments and Harcourt Clinical Assessments also takes no such action.

I. Defendants' employees involved in the management, development, marketing or sale 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 any such transfer.

J. Subject to the approval of the United States, Defendants shall appoint a person or persons to oversee Pearson Clinical Assessments. This person shall be responsible for ensuring Defendants' compliance with this section, and shall have complete managerial responsibility for Pearson Clinical Assessments, subject to the provisions of this 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. Subject to the approval of the United States, Defendants shall appoint a person or persons to oversee Harcourt Clinical Assessments. This person shall be responsible for ensuring Defendants' compliance with this section, and shall have complete managerial responsibility for Harcourt Clinical Assessments, subject to the provisions of this 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.

L. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States and shall take all steps necessary to ensure that Pearson Clinical Assessments and Harcourt Clinical Assessments also takes no such action.

M. This Hold Separate shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated:

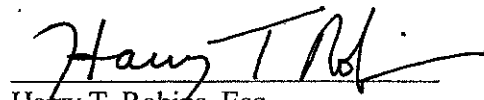
Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:



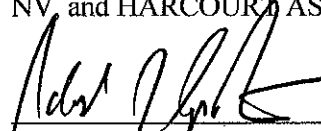
Damon J. Kalt, Esq.
U.S. Department of Justice
Antitrust Division, Networks and
Technology Enforcement Section
600 E Street, NW, Suite 9500
Washington, D.C. 20530

FOR DEFENDANTS
PEARSON PLC and PEARSON
EDUCATION INC.:



Harry T. Robins, Esq.
Morgan, Lewis & Bockius, LLP
101 Park Avenue
New York, New York 10178

FOR DEFENDANTS
REED ELSEVIER PLC, REED ELSEVIER
NV, and HARCOURT ASSESSMENT INC.:



Robert A. Lipstein, Esq. (D.C. Bar #253724)
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004

ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, ____.

United States District Judge