

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

UNITED STATES OF AMERICA,)
Department of Justice)
Antitrust Division)
325 7th Street, N.W., Suite 300)
Washington, DC 20530)
)
Plaintiff,)

CASE NUMBER 1:98CV02836

v.

JUDGE: James Robertson

PEARSON plc,
3 Burlington Gardens
London W1X 1E
England

DECK TYPE: Antitrust

DATE STAMP: 11/23/98

PEARSON INC.,)
c/o Addison Wesley Longman, Inc.)
One Jacob Way)
Reading, MA 01867)
)
and)

VIACOM INTERNATIONAL INC.)
c/o Viacom Inc.)
1515 Broadway)
New York, NY 10036)
)
Defendants.)

COMPLAINT

The United States, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin Pearson plc and its wholly owned subsidiary, Pearson Inc. (collectively "Pearson"), from acquiring certain publishing businesses of Viacom International Inc. ("Viacom"), a wholly owned subsidiary of Viacom Inc., and to obtain other relief as appropriate. Plaintiff alleges as follows:

1. Pearson and Viacom, two of the nation's largest publishers of textbooks and other educational materials, compete head-to-head in the development, marketing and sale of comprehensive science programs used by teachers and students in elementary schools for kindergarten through sixth grade. These comprehensive programs, which typically include textbooks and other educational materials as well as support services, are called "basal elementary school science programs." Pearson and Viacom are two of only four major publishers competing for sales of these programs.

2. Pearson and Viacom also are head-to-head competitors in the development, marketing and sale of textbooks and other educational materials used for college courses. For over thirty college courses, they publish textbooks that are close substitutes.

3. Unless this acquisition is blocked, competition for basal elementary school science programs and for certain college textbooks and educational materials will be substantially lessened, resulting in schools and students paying higher prices for textbooks and other educational materials, a reduction in the value or quantity of ancillary materials received by students and teachers, and a reduction in the support services offered. In addition, the quality of textbooks and materials is likely to decline.

I.

Jurisdiction and Venue

4. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. Defendants are engaged in activities that substantially affect interstate commerce. The Court has jurisdiction of this action and jurisdiction over the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

6. Defendant Viacom transacts business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

7. Defendant Pearson plc is a foreign corporation that transacts business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(d) (an alien may be sued in any district). Defendant Pearson Inc. transacts business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

Defendants and the Transaction

8. Pearson Inc. is a corporation organized and existing under the laws of Delaware, with its headquarters in New York, New York, which publishes textbooks and other educational materials under such names as Addison Wesley, Scott Foresman, and Harper Collins. Pearson plc is an international media corporation organized and existing under the laws of the United Kingdom, with its headquarters in London, England.

9. Viacom is a corporation organized and existing under the laws of Delaware, with its headquarters in New York, New York, which publishes textbooks and other educational materials under such names as Prentice Hall, Silver Burdett Ginn, and Allyn & Bacon. Its parent, Viacom Inc., is one of the world's largest entertainment and publishing companies and is a leading competitor in nearly every segment of the international media marketplace.

10. Pearson and Viacom reached an agreement on May 17, 1998, that provides for Pearson to purchase certain businesses of Viacom, which publish textbooks and other educational materials in major academic disciplines in elementary education, secondary education, and higher education.

III.

Relevant Geographic Market

11. The defendants sell textbooks and other educational materials throughout the United States to elementary and secondary schools and to colleges and universities. There are few foreign publishers of the textbooks and other educational materials described below to which United States purchasers would be likely to turn in the face of a small but significant price increase by domestic publishers. The United States, therefore, is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

IV.

Reduced Competition in Basal Elementary School Science Programs

A. Relevant Product Market

12. Schools throughout the United States teach science to students in elementary grades (kindergarten through sixth grade). New science programs are typically reviewed and selected every six to eight years. The decision to select a particular elementary school science program generally is made at the local level by school districts or systems or by individual schools. Administrators, curriculum coordinators, and classroom teachers participate in the selection process.

13. Most elementary schools teach science through comprehensive science programs, known as “basal elementary school science programs,” which provide organization and structure, as well as guidance and support, in how to teach the subjects. These basal programs are generally designed and purchased as part of an integrated curriculum for use in multiple elementary school grades. Student textbooks and teachers’ editions of the textbooks are the core of most basal programs. Additionally, the programs typically include other important educational materials called “ancillary” materials, consisting of student workbooks and notebooks, charts, videotapes, other audio-visual aids, and “manipulative” materials for student science exercises and experiments. Basal elementary school science programs also typically include services such as teacher guidance and instruction through training sessions, consultant visits, and other support.

14. States, school districts and systems, and individual schools desiring to purchase basal elementary school science programs would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of these programs or a reduction in the value of ancillary materials or services provided. For example, a school seeking to purchase a basal elementary school science program would not respond to a price increase by considering basal programs in mathematics or reading. Nor would schools substitute alternative science educational materials in sufficient numbers to defeat a small but significant price increase in basal elementary school science programs.

15. Basal elementary school science programs are a relevant product market for purposes of analyzing this acquisition under the Clayton Act.

B. Competition and Entry

16. Pearson and Viacom are head-to-head competitors for basal elementary school science program sales. For example, Pearson's *Discover The Wonder* program (published under the name Scott Foresman Science) is a close substitute for Viacom's *Discovery Works* program (published under the name Silver Burdett Ginn Science). Pearson and Viacom consistently have led the market for basal elementary school science programs.

17. Pearson and Viacom also compete to maintain and improve program quality. They currently are each developing new basal elementary school science programs. Starting in 1999, they will offer these programs for sale to schools throughout the United States.

18. During the last six years, Pearson and Viacom have together accounted for approximately 50 percent or more of new sales of basal elementary school science programs. There are two other large publishers of basal programs, but only one of them offers a close substitute for the defendants' programs. A few smaller publishers produce nontraditional programs, but these programs are not close substitutes for the major basal programs. Thus, the proposed acquisition would further concentrate a highly concentrated market.

19. If Pearson acquires Viacom's basal elementary school science program, there is unlikely to be timely entry by any company offering another such program that would be sufficient to defeat an anticompetitive increase in price (including a reduction in ancillary materials or services provided), or that would spur continuing innovation in the development and production of such programs.

20. To offer a basal elementary school science program, a publisher would first need to assemble an experienced and knowledgeable editorial staff to develop and extensively test the new

program. Such a process is costly and time-consuming. Second, a large sales staff and additional substantial capital would be needed to market a basal elementary school science program effectively. Selling basal elementary school science programs requires a trained and knowledgeable sales force to present the program to, and to foster relationships with, administrators and teachers in each school district, and often in each school, in which a program is sold. Third, funding for purchase of elementary school science programs typically is not as large or consistent as it is for “core” subjects such as elementary school mathematics and reading programs. This makes it less likely that publishers would undertake the necessary investments in order to begin offering a basal elementary school science program because it increases the possibility that entry would not be profitable. Fourth, a reputation as an experienced and reliable science publisher is needed to successfully sell elementary school science programs. Establishing such a reputation can be difficult and takes time.

C. Harm to Competition

21. Pearson and Viacom’s aggressive competition for basal elementary school science program sales has resulted in lower prices, more and better ancillary materials and services, and greater efforts to maintain program quality and innovation. The proposed transaction would eliminate this competition between close substitutes. Thus, following the merger, the prices of basal elementary school science programs likely would increase or the value of materials and services likely would decline. In addition, the acquisition would likely reduce incentives to improve the programs.

V.

Reduced Competition in College Textbook Markets

A. Relevant Product Markets

22. Publishers market textbooks and other educational materials to professors in colleges and universities throughout the country. In most cases, professors select the materials that will be used for their courses.

23. Professors generally select textbooks to serve as the primary teaching material for a course. Textbooks provide the core written material for a course, serve as foundation for the professor's overall lesson plan, and set forth the framework for class discussions. Professors will choose among textbooks that can provide this core content and structure. Students then buy the textbook selected by their professor, typically at college bookstores.

24. Publishers sometimes offer professors free ancillary educational materials, such as a teacher's edition of the textbook, audio-visual teaching tools, and copies of the textbook for teaching assistants, as inducements to choose a particular publisher's textbook. In addition, the textbooks that students buy sometimes are part of a discounted package that includes further ancillary educational materials such as CD-ROMs and study guides.

25. For the thirty-two courses identified in Exhibit A, college textbooks, along with ancillary educational materials, are used as the primary teaching materials.

26. Professors choosing a textbook and ancillary educational materials for any of the courses listed in Exhibit A would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of the textbook available for that course or a small but significant decrease in the ancillary materials sold or included with the textbook. In

addition, students purchasing a textbook for any of the courses listed in Exhibit A would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of the textbook or a small but significant decrease in the ancillary materials sold or included with the textbook.

27. In many courses, used textbooks are available to some students. Textbooks are generally revised every three to four years, and professors usually require use of the newest edition. This limits the ability of used textbooks to compete with new texts. Supply of used textbooks is also limited by the number of students that sell their textbooks back to college bookstores. Used textbooks cannot defeat an increase in the price of new textbooks or a decrease in the supply of the ancillary materials included or sold with them.

28. Textbooks, along with ancillary educational materials, for each of the courses listed in Exhibit A, constitute a separate relevant product market for purposes of analyzing this acquisition under the Clayton Act.

B. Competition and Entry

29. In each relevant market, Pearson and Viacom offer textbooks that are close substitutes. They are among the few leading firms that compete to provide the textbooks and ancillary materials, accounting for a significant share of all new sales. Thus, the proposed acquisition would further significantly concentrate highly concentrated markets.

30. If Pearson acquires Viacom's products, there is unlikely to be timely entry by any company offering textbooks and ancillary materials in any of the relevant product markets identified in Exhibit A that would be sufficient to defeat an anticompetitive price increase, or a

decrease in ancillary materials, or that would spur continuing innovation in the development and production of such products.

31. Successful entry would require a publisher to assemble authors and a sophisticated editorial staff to develop a new textbook and to have it reviewed by numerous professors prior to its publication. Such a process is costly and time-consuming. Effectively selling college textbooks usually requires a trained and knowledgeable sales force to visit and foster relationships with professors at each school to which the textbook is sold, along with direct mail solicitation and participation in conventions. Finally, the reputation of the successful incumbent textbook may be difficult for a new textbook to challenge. In most of the markets listed in Exhibit A, the leading textbooks have been published for many years, and are well known to most faculty members who teach in the field.

C. Harm to Competition

32. Competition between Pearson and Viacom to provide college textbooks and ancillary materials for the courses listed in Exhibit A has resulted in lower prices, the availability of more ancillary materials, and created a significant incentive for each to publish new titles and to improve product quality. The proposed transaction would eliminate this competition. Following the merger, Pearson could unilaterally raise the prices of, or reduce the ancillary materials provided with, its and Viacom's products. An increase in price or reduction in ancillary materials and services by other firms would be more likely as well. The acquisition also would reduce incentives to publish new textbooks and ancillary materials and to improve the existing textbooks and ancillary materials.

VII.

Violations Alleged

33. The effect of Pearson's acquisition of certain Viacom publishing businesses is to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

34. Unless restrained, the transaction will likely have the following effects, among others:

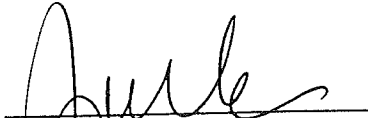
- a. actual and future competition between Pearson and Viacom will be eliminated;
- b. competition generally in the market for basal elementary school science programs and in the markets for the sale of textbooks and ancillary materials for each of the college courses identified in Exhibit A will likely be substantially lessened;
- c. prices for basal elementary school science programs and for textbooks and ancillary materials for each of the college courses identified in Exhibit A will likely increase or the value of ancillary materials or services will likely decline; and
- d. competition in the development and improvement of basal elementary school science programs and college textbooks and ancillary materials in each of the college courses identified in Exhibit A will likely be substantially lessened.

VIII.

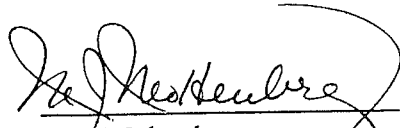
Request for Relief

35. The plaintiff requests (a) adjudication that Pearson's proposed acquisition of certain Viacom publishing businesses would violate Section 7 of the Clayton Act, (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition, (c) an award to the plaintiff of the costs of this action, and (d) such other relief as is just and proper.


Dated: November __, 1998



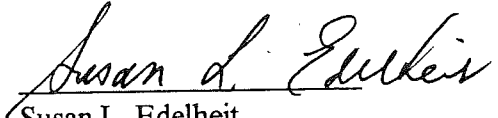
Joel I. Klein
Assistant Attorney General



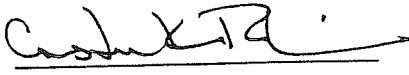
M.J. Moltenbrey
Chief, Civil Task Force



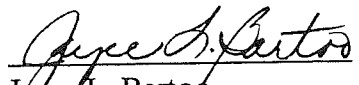
John M. Nannes
Deputy Assistant
Attorney General



Susan L. Edelheit
Assistant Chief,
Civil Task Force



Constance K. Robinson
Director of Operations
and Merger Enforcement



Joyce L. Bartoo
Trial Attorney
DC Bar #359264

John W. Poole (DC Bar #34136)
David C. Kully (DC Bar #448763)
Ahmed E. Taha

Exhibit A

Abstract Algebra
Anatomy & Physiology (One Term)
Anatomy & Physiology (Two Term)
Art Appreciation
Circuits and Networks
Classical Mythology
Classroom Management
Concrete Engineering
Controls Engineering
Environmental Economics
Fortran
Human Anatomy
Human & Cultural Geography
Instructional Design
Intermediate Microeconomics
International Corporate Finance
International Economics
K-12 Curriculum
Manufacturing Engineering
Mathematics for Elementary Teachers
Measurement and Assessment of Students
Microbiology (Non-majors)
Multicultural Education
Operating Systems
School Administration: Supervision
Structural Engineering
Surveying
Teaching Math to Elementary Students
Teaching Reading to Secondary Students
Technical Math
Technical Math with Calculus
Technical Writing