

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No: 01 1419
)	(Antitrust)
)	
THE THOMSON CORPORATION,)	Filed: 6/27/2001
HARCOURT GENERAL, INC. and)	Nancy Mayer Whittington, Clerk
REED ELSEVIER INC.,)	U.S. District Court
)	
Defendants.)	

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 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 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 licence 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 be deemed 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 Complaint 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 Separate 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 divestitures 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.

Dated: June 27, 2001

Respectfully submitted,

FOR PLAINTIFF UNITED STATES
OF AMERICA:

FOR DEFENDANT THOMSON
CORPORATION:

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ORDER

IT IS SO ORDERED by the Court, this 27th day of June, 2001.

/s/ Thomas F. Hogan
United States District Judge

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