

INTERNATIONAL TRADE COMMISSION

[USITC SE-96-21]

Emergency Notice; Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: Thursday, October 10, 1996 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED: 1. The Chairman's proposal for Fiscal Year 1997 Expenditure Plan and Fiscal Year 1998 Budget Request.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: October 7, 1996.

Donna R. Koehnke,
Secretary.

[FR Doc. 96-26252 Filed 10-8-96; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Plaintiff's Response; United States of America v. The Thomson Corporation and West Publishing Company

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that Public Comments and Plaintiff's Response have been filed with the United States District Court for the District of Columbia in *United States v. The Thomson Corporation and West Publishing Company*, Civ. Action No. 96-1415.

On June 19, 1996, the United States filed a Complaint seeking to enjoin a transaction in which The Thomson Corporation ("Thomson") agreed to acquire West Publishing Company ("West"). Thomson and West are two of the country's largest publishers of law books and legal research materials. Thomson and West publish numerous competing legal publications, including the only two annotated United States Codes and the only two enhanced U.S. Supreme Court reporters. The Complaint alleged that the proposed acquisition would substantially lessen competition in the market for legal publications in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1.

Public comment was invited within the statutory 60-day comment period. Such comments, and the responses thereto, are hereby published in the Federal Register and filed with the Court. Charts appended to the Public Comments have not been reprinted here, however they may be inspected with copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and Plaintiff's Response in Room 3233 of the Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (telephone: 202-633-2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, 1401 H Street, NW, Suite 4000, Washington, DC 20530 (202) 307-5779, State of California, State of Connecticut, State of Illinois, Commonwealth of Massachusetts, State of New York, State of Washington, and State of Wisconsin Plaintiffs, v. The Thomson Corporation, and West Publishing Company Defendants. Civil No. 96-1415 (PLF)

PLAINTIFFS' RESPONSE TO PUBLIC COMMENTS

I. Background

II. Response to public comments

- A. Divestiture of the Publications Enumerated in the Decree Adequately Protects Competition
 1. Divestiture of competing products, not companies and supporting infrastructure
 2. Availability of legal editors
 3. Divestiture products independent of a cross-referencing "system"
 4. California
 5. Brand names
- B. The Option to Official Reporter Contract States Provision is Appropriate and Adequate Relief for the Violation Alleged in the Complaint
 1. California
 2. Washington
 3. Wisconsin
 4. Other states
- C. Divestiture of Auto-Cite and Lexis/Reed Elsevier's Option to extend Critical Thomson Content Licenses Adequately Protects Competition in the Comprehensive Online Legal Research Services Market
 1. TCSL
 2. Product differentiation
 3. Auto-Cite divestiture
 4. Overall competition in the comprehensive online legal research services market

D. The Star Pagination License Eases a Significant Barrier to Entry and is Procompetitive

1. Validity of West's star pagination copyright claim
 2. Abandonment of star pagination copyright claim
 3. Text copyright
 4. Other antitrust violations
 5. Citation to first page of an opinion
 6. Level of license royalty fees
 7. Large publishers
 8. Other markets
 9. The need for a text license in unrelated to this merger transaction
 10. Selection of cases
 11. Description of product or service
 12. License fee per format
 13. Challenges of West's copyright
 14. The confidentiality provision is intended to protect the licensee and could encourage procompetitive discounting
 15. Arbitration
 16. The Internet
 17. License fee for books
 18. Other comments regarding the star pagination license
- E. Plaintiffs Used Appropriate Merger Analysis in Examining this Merger
- F. Plaintiffs Should Not Require Divestiture of the Juris Database
1. There is no conflict of interest within the Department on this matter
 2. Familiarity with legal publishing industry
- G. Miscellaneous Comments—unrelated to merger or unsupported by the investigation
- III. The Legal Standard Governing the Court's Public Interest Determination
- IV. Conclusion

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("Tunney Act"), the United States and the attorneys general of the states of California, Illinois, Massachusetts, New York, Washington, and Wisconsin hereby respond to the public comments received regarding the proposed Final Judgment in this case.¹

I

Background

On June 19, 1996, the United States Department of Justice ("the Department") and the seven plaintiff state attorneys general's offices filed the Complaint in this matter. The Complaint alleges that defendants Thomson Corporation ("Thomson") and West Publishing Company ("West"), in violation of Section 7 of the Sherman Act, 15 U.S.C. 18, proposed a merger that was likely substantially to lessen competition.

¹ The State of Connecticut does not join in this Response to Comments. Therefore, subsequent references to "the governments" or "the plaintiffs" refer only to the plaintiffs who have signed the response.