

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
Department of Justice, Antitrust Division)	
600 E Street, NW, Suite 9500)	
Washington, D.C. 20530,)	
)	
Plaintiff,)	CASE NO.:
)	
v.)	JUDGE:
)	
PEARSON PLC,)	DECK TYPE: Antitrust
80 Strand)	
WC2R 0RL)	DATE STAMP:
London, England,)	
)	
PEARSON EDUCATION INC.,)	
One Lake Street)	
Upper Saddle River, New Jersey 07458,)	
)	
REED ELSEVIER PLC,)	
1-3 Strand)	
WC2N 5JR)	
London, England,)	
)	
REED ELSEVIER NV,)	
Radarweg 29)	
1043 NX Amsterdam)	
The Netherlands,)	
)	
HARCOURT ASSESSMENT INC.,)	
14500 Bulverde Road)	
San Antonio, Texas 78259,)	
)	
Defendants.)	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the

United States, brings this civil antitrust action to enjoin the proposed acquisition by Pearson plc and Pearson Education Inc. (collectively "Pearson"), of Harcourt Assessment Inc., (hereafter "Harcourt") a wholly-owned subsidiary of Reed Elsevier PLC and Reed Elsevier, NV (collectively "Reed Elsevier"), and to obtain equitable and other relief. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. On or about May 4, 2007, and amended on May 21, 2007, Pearson and Reed Elsevier signed a sale and purchase agreement for Pearson to acquire all of the outstanding voting securities of Harcourt, as well as additional Reed Elsevier assets, for approximately \$950 million in cash.

2. Pearson and Harcourt both develop, publish, market, sell, and distribute individually-administered standardized norm-referenced comprehensive clinical tests (hereafter "clinical tests"), including adaptive behavior and speech and language clinical tests. Pearson's proposed acquisition of Harcourt would combine the two largest publishers of such tests in the United States. Pearson also develops, publishes, markets, sells, and distributes market-leading adult abnormal personality clinical tests. Harcourt has invested substantial resources in the development of a new adult abnormal personality clinical test and plans to enter the market for such tests within the next year.

3. The markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests are highly concentrated and there are high barriers to enter these markets. Pearson's proposed acquisition of Harcourt will eliminate competition between Pearson

and Harcourt in these markets.

4. The United States brings this action to prevent Pearson's proposed acquisition of Harcourt because it would substantially lessen competition in the markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. PARTIES TO THE PROPOSED ACQUISITION

5. Pearson plc, a U.K. corporation with its headquarters in London, England, operates businesses in educational publishing, business information, and consumer publishing. Pearson Education Inc. (hereafter "Pearson Education"), a wholly-owned subsidiary of Pearson plc, is a Delaware corporation with its headquarters in Upper Saddle River, New Jersey. Pearson Education develops, markets, sells, and distributes clinical tests throughout the United States.

6. Reed Elsevier PLC, a U.K. corporation with its headquarters located in London, England, and Reed Elsevier NV, a Dutch corporation with its headquarters located in Amsterdam, Netherlands, jointly own Harcourt. Harcourt, a New York corporation with its headquarters located in San Antonio, Texas, develops, markets, sells, and distributes clinical tests throughout the United States.

III. JURISDICTION AND VENUE

7. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Defendants develop, market, sell, and distribute clinical tests in the flow of interstate commerce. Defendants' activities in developing, marketing, selling, and distributing these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Defendants have consented to venue and personal jurisdiction in this judicial district and venue is proper under 28 U.S.C. 1391 (d).

IV. TRADE AND COMMERCE

A. Clinical Tests Generally

10. Psychologists and clinicians, among others, use a variety of clinical tests to test for, and diagnose individuals with, certain disorders or disabilities, as well as to identify individuals at risk for such disorders or disabilities. Clinical tests can also be used to develop and provide intervention strategies for, and to monitor the progress of treatments for, such disorders or disabilities.

11. Publishers, including the Defendants, develop, edit, standardize, norm-reference, market, and distribute clinical tests for a wide range of disorders and disabilities that have been designed and authored by leading experts in such disciplines.

12. Standardization is the process of developing a test that reliably, validly, and consistently assesses a specific discipline. Standardized tests are authored, designed, and developed so that the test materials, test procedures, and test scoring are consistent across each test administration. Standardized test scores can then be documented empirically and compared across test administrations.

13. Norm-referencing is the process of determining average test scores across demographics. Publishers norm-reference a standardized test by administering the test to a representative sample of individuals and then determining an average test score. Norm-referenced tests can then be used to compare an individual's test score to an average test score of similarly-situated individuals.

14. Comprehensive tests are tests that fully assess the subject area being tested, as well as its various domains and degrees of affliction. By contrast, non-comprehensive tests, often termed "screeners," are far less thorough and may be designed simply to indicate the likely presence or absence of a disorder or disability.

15. In addition to clinical tests, non-standardized, non-norm-referenced assessments (e.g., charts published in books or journals, single-scale tests, and free material available on the internet) are available to school psychologists and clinicians. However, such test materials are inferior to clinical tests because they do not provide the same levels of validity and reliability, nor can they be used in many situations in which a clinical test is required, for example, where such tests must be administered before a certain diagnosis or classification can be made in order for an individual to qualify for special services, such as special education or speech and language instruction.

B. Relevant Product Markets

1. Adaptive Behavior Clinical Tests

16. Pearson and Harcourt each publish the market-leading adaptive behavior clinical tests. Pearson publishes the Vineland Adaptive Behavior Scales, which is currently in its second edition, and Harcourt publishes the Adaptive Behavior Assessment System, which is currently in its second edition.

17. School psychologists and clinicians, among others, use adaptive behavior clinical tests to assess an individual's competence in meeting their independent needs and satisfying the social demands of their environment. Generally, adaptive behavior tests assess three broad domains of adaptive behavior: conceptual (*e.g.*, communication, functional academics, self-direction, and health and safety), social (*e.g.*, social skills and leisure), and practical (*e.g.*, self-care, home living, community use, and work).

18. Non-comprehensive adaptive behavior tests, such as those that only assess narrow adaptive behavior domains, are not substitutes for adaptive behavior clinical tests because such tests are not sufficiently broad to assess all relevant areas of adaptive behavior. Other adaptive behavior assessment scales, such as neuropsychological behavioral or emotional scales, do not assess the same domains as do adaptive behavior clinical tests. Moreover, non-standardized, non-norm-referenced adaptive behavior tests are not substitutes for adaptive behavior clinical tests because they do not provide the same levels of validity or reliability as clinical tests.

19. A small but significant post-acquisition increase in the price of adaptive behavior clinical tests would not cause customers to substitute other types of tests, or to otherwise reduce their purchases of adaptive behavior clinical tests, in sufficient quantities so as to make such a

price increase unprofitable.

20. Accordingly, the development, marketing, sale, and distribution of adaptive behavior clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

2. Speech and Language Clinical Tests

21. Pearson and Harcourt each publish market-leading speech and language clinical tests. Pearson publishes two such tests known as the Comprehensive Assessment of Spoken Language and the Oral and Written Language Scales, each of which is in its first edition. Harcourt publishes a speech and language clinical test known as the Clinical Evaluation of Language Fundamentals, which is currently in its fourth edition.

22. Speech-language pathologists, among others, use speech and language clinical tests to diagnose individuals having difficulties with understanding others, expressing thoughts and ideas, producing speech sounds, as well as other related difficulties. Speech and language clinical tests assess various domains, including receptive and expressive language.

23. Non-comprehensive speech and language tests, such as those that only assess narrow speech and language domains, are not substitutes for speech and language clinical tests because such tests are not sufficiently broad to assess all relevant areas of speech and language. Moreover, non-standardized, non-norm-referenced speech and language tests are not substitutes for speech and language clinical tests because they do not provide the same levels of validity or reliability as clinical tests.

24. A small but significant post-acquisition increase in the price of speech and language clinical tests would not cause customers to substitute other types of tests, or to otherwise reduce

their purchases of speech and language clinical tests, in sufficient quantities so as to make such a price increase unprofitable.

25. Accordingly, the development, marketing, sale, and distribution of speech and language clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

3. Adult Abnormal Adult Personality Clinical Tests

26. Pearson publishes two series of adult abnormal personality clinical tests known as the Minnesota Multiphasic Personality Inventories, which are currently in their second edition, and the Millon Clinical Multiaxial Inventories, which are currently in their third edition. Harcourt is developing an adult abnormal personality clinical test known as the Emotional Assessment System that it expects to make commercially available in late 2008.

27. Adult abnormal personality tests are generally used by clinicians and psychologists to diagnose and assess chronic, inflexible, and maladaptive patterns of perceiving, thinking, and behaving that seriously impair an individual's ability to function in social settings. Such disorders include clinical disorders, such as anxiety, as well as personality disorders, such as paranoia. Many clinicians employ adult abnormal personality clinical tests to obtain comprehensive diagnoses of both kinds.

28. Other methods of assessing abnormal personality, such as using structured interviews or non-standardized tests (including developing one's own tests), are inferior to adult abnormal personality clinical tests because they do not have the same degree of reliability, and because interpreting one's own tests would introduce subjective elements into the analysis not present with the use of clinical tests. In addition, in some locations, for some applications, clinical

tests are required by law and other methods of assessment cannot be used.

29. Non-comprehensive adult abnormal personality tests, such as those that only assess certain clinical or personality disorders, are not substitutes for adult abnormal personality clinical tests because such tests are not sufficiently broad to assess all relevant disorders of adult abnormal personality. Moreover, non-standardized, non-norm-referenced adult abnormal personality tests are not substitutes for adult abnormal personality clinical tests because they do not provide the same levels of validity or reliability as clinical tests.

30. A small but significant post-acquisition increase in the price of adult abnormal personality clinical tests would not cause customers to substitute other types of tests, or to otherwise reduce their purchases of adult abnormal personality clinical tests, in sufficient quantities so as to make such a price increase unprofitable.

31. Accordingly, the development, marketing, sale, and distribution of adult abnormal personality clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

C. Relevant Geographic Market

32. The Defendants sell adaptive behavior, and speech and language clinical tests throughout the United States to psychologists, clinicians, speech-language pathologists, and others. Pearson also sells adult abnormal personality tests to psychologists, clinicians, and others in the United States. In the United States, customers would not purchase clinical tests published outside the United States because such tests have not been standardized or norm-referenced on samples of individuals located in the United States.

33. A small but significant post-acquisition increase in the price of adaptive behavior,

speech and language, and adult abnormal personality clinical tests would not cause customers to turn to clinical tests published outside of the United States for the purchase of such tests.

34. Accordingly, the United States constitutes the relevant geographic market pursuant to Section 7 of the Clayton Act.

D. Anticompetitive Effects: Reduced Price and Innovation Competition

1. Adaptive Behavior Clinical Tests

35. The proposed acquisition will eliminate price and innovation competition between Pearson and Harcourt in the market for adaptive behavior clinical tests throughout the United States.

36. The adaptive behavior clinical test market is highly concentrated. Pearson and Harcourt's revenues currently account for approximately 66 percent and 26 percent of the revenues of the market, respectively. Pearson's proposed acquisition of Harcourt would therefore result in a post-merger share of approximately 92 percent of the adaptive behavior clinical test market.

37. The proposed acquisition will substantially increase the likelihood that Pearson will unilaterally increase the price, or reduce the number or quality, of adaptive behavior clinical tests published in the United States.

38. Any response of competing publishers of adaptive behavior clinical tests would not be sufficient to constrain the unilateral exercise of market power by Pearson after the acquisition. A significant number of customers regard Pearson and Harcourt as their first and second choices when purchasing adaptive behavior clinical tests, and consider such tests from other publishers to be a distant third choice. Therefore, an insufficient number of customers of adaptive behavior

clinical tests would purchase a competing publisher's test to defeat an anticompetitive price increase by Pearson.

39. The proposed acquisition will therefore substantially lessen competition in the development, marketing, sale, and distribution of adaptive behavior clinical tests in the United States in violation of Section 7 of the Clayton Act.

2. Speech and Language Clinical Tests

40. The proposed acquisition will eliminate price and innovation competition between Pearson and Harcourt in the market for speech and language clinical tests throughout the United States.

41. The speech and language clinical test market is highly concentrated. Harcourt and Pearson's revenues currently account for approximately 64 percent and 26 percent of the revenues of the market, respectively. Pearson's proposed acquisition of Harcourt would therefore result in a post-merger share of approximately 90 percent of the speech and language clinical test market. Only one other firm in the United States develops, markets, and publishes a competing speech and language clinical test, and that test accounts for the remaining 10 percent of the market, on a revenue basis.

42. The proposed acquisition will substantially increase the likelihood that Pearson will unilaterally increase the price, or reduce the number or quality, of speech and language clinical tests published in the United States.

43. Any response of the competing publisher of speech and language clinical tests would not be sufficient to constrain the unilateral exercise of market power by Pearson after the acquisition because there are a significant number of customers who regard Pearson and

Harcourt's speech and language clinical tests as their first and second choices, and consider the competing publisher's test to be a distant third. Therefore, an insufficient number of customers of speech and language clinical tests would purchase the competing publisher's test to defeat an anticompetitive price increase by Pearson.

44. The proposed acquisition will therefore substantially lessen competition in the development, marketing, sale, and distribution of speech and language clinical tests in the United States in violation of Section 7 of the Clayton Act.

3. Adult Abnormal Personality Clinical Tests

45. The proposed acquisition will eliminate price and innovation competition between Pearson and Harcourt in the market for adult abnormal personality clinical tests.

46. The adult abnormal personality clinical test market is highly concentrated and dominated by Pearson, which accounts for approximately 93 percent of the revenues for such tests. After many years of trying, only one other publisher in the United States has managed to obtain more than an insignificant share of this market. Customers prefer Pearson's tests and have made a significant investment in learning how to work with and use Pearson's tests. Such customers are committed to Pearson's tests and thus far have been unwilling to substitute another test. The small share that Pearson's only competitor has gained after many years is an indicator that customers consider the competitor's test to be a distant second choice to Pearson's tests.

47. Harcourt has invested substantial resources over a prolonged period of time in the development of a new computer-based adaptive adult abnormal personality clinical test that will utilize computer technology to reduce test administration time. Harcourt is in the standardization and norm-referencing phase of development and is in the process of collecting data from clinical

and non-clinical examinees. Harcourt plans to enter the market for such tests to compete with Pearson in 2008. To date, no other publisher has formed plans to enter this market, and any potential entry by another publisher would require considerable lead time and development effort of the sort that Harcourt has already incurred.

48. Harcourt plans to enter the market with a new adult abnormal personality clinical test that will offer new features and functionality that customers desire. Such new features and functionality are not currently offered by either Pearson or the other competing publisher. Accordingly, Harcourt's entry would likely benefit clinicians and their patients through price and innovation competition for adult abnormal personality clinical tests.

49. The proposed acquisition will therefore substantially lessen competition in the development, marketing, sale, and distribution of adult abnormal personality clinical tests in the United States in violation of Section 7 of the Clayton Act.

E. Entry: New Entrants Will Not Defeat an Exercise of Market Power

50. Successful entry into the markets for the development, marketing, sale, and distribution of adaptive behavior, speech and language, and adult abnormal personality clinical tests in the United States is difficult, time consuming, and costly.

51. Entry into such markets in the United States takes many years. A new entrant would need to contract with an author qualified to write a clinical test and then assemble a sophisticated editorial staff to develop the test. Clinical test development requires analyzing, editing, standardizing, and norm-referencing a new test, which takes two to four years to complete.

52. New entrants also would need to convince customers to switch from their current

adaptive behavior, speech and language, or adult abnormal personality clinical test of choice to the entrant's new test.

53. Therefore, entry by any firm into the markets for the development, marketing, sale, and distribution of adaptive behavior, speech and language, and adult abnormal personality clinical tests would not be timely, likely, or sufficient to counter the anticompetitive effects of Pearson's proposed acquisition of Harcourt.

V. VIOLATIONS ALLEGED

CAUSE OF ACTION

(Violation of Section 7 of the Clayton Act)

54. The United States incorporates the allegations of paragraphs 1 through 53 above.

55. The proposed acquisition of Harcourt by Pearson would substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

56. Unless restrained, the acquisition will have the following anticompetitive effects, among others:

- a. competition in the adaptive behavior clinical test market in the United States will be lessened substantially;
- b. actual and potential competition between Pearson and Harcourt in the development, marketing, sale, and distribution of adaptive behavior clinical tests in the United States will be eliminated;
- c. prices for adaptive behavior clinical tests in the United States likely will

- increase, and innovation likely will decline;
- d. competition in the speech and language clinical test market in the United States will be lessened substantially;
 - e. actual and potential competition between Pearson and Harcourt in the development, marketing, sale, and distribution of speech and language clinical tests in the United States will be eliminated;
 - f. prices for speech and language clinical tests in the United States likely will increase, and innovation likely will decline;
 - g. competition in the adult abnormal personality clinical test market in the United States will be lessened substantially;
 - h. actual and potential competition between Pearson and Harcourt in the development, marketing, sale, and distribution of adult abnormal personality clinical tests in the United States will be eliminated; and
 - i. potential decreases in prices for adult abnormal personality clinical tests in the United States likely will be eliminated, and innovation likely will decline.

VI. REQUEST FOR RELIEF

57. The United States requests that this Court:
- a. adjudge and decree the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
 - b. enjoin and restrain the Defendants and all persons acting on their behalf

- from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Pearson with the operations of Harcourt;
- c. award the United States its costs for this action; and

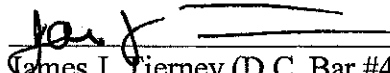
d. grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

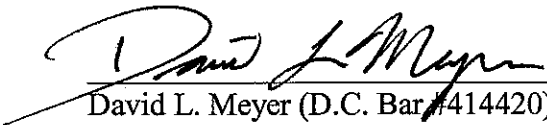
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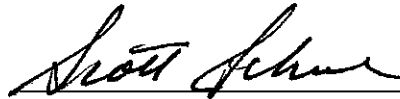
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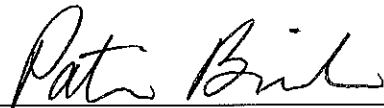
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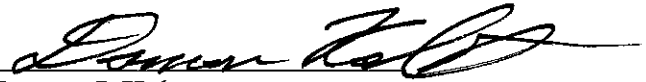
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