Section 112 and 114 of the Act, 42 U.S.C. 7412 and 7414, codified at 40 CFR part 61, Subpart M, and the Control of Particulate Emissions rules of the state implementation plan for the State of Wisconsin. The proposed consent decree requires the defendants to pay a civil penalty of $110,000 and to comply with an asbestos abatement management program in their future work.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Wisconsin Central Limited, et al.,* D.J. Ref. 90–5–2–1–2000/2.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of Wisconsin, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202; at the Region V office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.50 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Wisconsin Central Limited, et al.,* D.J. Ref. 90–5–2–1–2000/2.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–33652 Filed 12–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Pearson Plc, Pearson Inc. & Viacom International Inc., No. 1:98CV02836 (D.D.C., filed Nov. 23, 1998); Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Pearson plc, Pearson Inc., and Viacom International Inc.,* No. 1:98CV02836. On November 23, 1998, the United States filed a Complaint alleging that the proposed sale by Viacom International Inc. of certain publishing businesses to Pearson Inc. and Pearson plc (collectively ''Pearson'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Pearson to divest a comprehensive elementary school science program and textbooks for thirty-two college courses. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, DC.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Dep[artment of Justice, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530 (telephone: (202) 616–5935).

Constance Robinson,

Director of Operations and Director of Merger Enforcement, Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

A. 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 District for the District of Columbia.

B. The parties stipulate that a Final Judgment in the form hereto attached may be filed 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 plaintiff 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.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, 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.

D. Defendants will not consummate their transaction before the Court has signed this Stipulation and Order.

E. Pearson shall prepare and deliver affidavits in the form required by the provisions of Section IX of the proposed Final Judgment commencing no later than twenty (20) calendar days after the filing of the Complaint in this action, and every thirty (30) days thereafter pending entry of the Final Judgment.

F. In the event plaintiff withdraws its consent, as provided in paragraph B above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: November 23, 1998.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Mary Jean Moltenbrey,

Chief, United States Department of Justice, Antitrust Division, Civil Task Force, 325 7th Street, N.W., Suite 300, Washington, DC 20530, 202–616–5935.

FOR DEFENDANT VIACOM INTERNATIONAL INC.

Wayne D. Collins,

Shearman & Sterling, 599 Lexington Avenue, New York, N.Y 10022, (212) 848–4127.

Attorney for Defendant Viacom International Inc.

FOR DEFENDANTS PEARSON plc and PEARSON INC.

Robert S. Schlossberg,

Morgan, Lewis & Bockius LLP, 1800 M Street, N.W., Washington, DC 20036–5869, 202–467–7212.

Attorney for Defendants Pearson plc and Pearson Inc.

SO ORDERED:

_____

United States District Judge

Final Judgment

Whereas plaintiff the United States of America (hereinafter ''United States''), has filed its Complaint herein, and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture of certain assets to one or more third parties to ensure that competition is substantially preserved is the essence of this agreement;

And Whereas, the parties intend to require defendants to divest, as viable lines of business, certain assets so as to ensure, to the sole satisfaction of the United States, that the Acquirer will be able to publish and market the assets as viable lines of business for the purpose of maintaining the current level of competition;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the person(s) to whom Pearson shall sell the Divestiture Products (as defined below).

B. ''Divestiture Products'' means all of the products identified on Exhibits A and B attached hereto. Each Divestiture Product includes all of the following:

1. unless non-assignable, all licenses, permits and authorizations issued by any governmental or private organization relating to the Divestiture Product;

2. unless non-assignable, all contracts, teaming arrangements, agreements, leases, commitments and understandings and their associated intangible rights pertaining to the Divestiture Product, including, but not limited to author permissions and other similar agreements, adoption and other agreements with purchasers, distribution agreements that relate to the Divestiture Product, vendor or supply agreements with respect to components of the Divestiture Product;

3. unless non-assignable, all original and digital artwork, film plates, and other reproductive materials relating to the Divestiture Product, including, but not limited to all manuscripts and illustrations and any other content and any revisions or revision plans thereof in print or digital form;

4. all sales support and promotional materials, advertising materials and production, sales and marketing files relating to the Divestiture Product;

5. all existing customer lists and credit records, or similar records of all sales and potential sales of the Divestiture Product, and all other records maintained in connection with the Divestiture product;

6. except as provided in definition B.7, below, and unless non-assignable, all intangible assets relating to the Divestiture Product, including but not limited to all patents, copyrights and trademarks (registered and unregistered), common law trademark rights; licenses and sublicenses, contract rights, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures; design tools; and all manuals and technical information relating to the Divestiture Product provided to employees, customers, suppliers, agents or licensees;

7. all titles of existing products comprising the Divestiture Product, including, but not limited to the titles ''Discover Works,'' ''Science Horizons,'' ''Discover the Wonder,'' and ''Destinations in Science,'' as applicable, but not any corporate trademarks or trade names of Pearson or Viacom;

8. all research data concerning historic and current research and development efforts relating to the Divestiture Product; and

9. at Acquirer's option, computers and other tangible assets used primarily for production of the Divestiture Product.

Pearson shall use it best efforts to facilitate the assignment to the Acquirer of any of the above that Pearson presently holds or uses pursuant to a license or any other agreement.

C. ''Pearson'' means defendants Pearson plc, a U.K. corporation with its headquarters in London, England, and Pearson, Inc., a Delaware corporation with its headquarters in New York, New York, and includes their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. ''Retained Product'' means any product offered for sale or in development by Pearson or Viacom as of November 1, 1998, that is not a Divestiture Product.

E. ''Scott Foresman Addison Wesley'' means the publishing activities of Addison Wesley Longman Inc. and Addison Welsey Educational Publishers, Inc, both wholly owned subsidiaries of Pearson Inc., that result in products bearing the ''Scott Foresman,'' ''Addison Wesley,'' ''SFAW'' or ''Scott Foresman Addison Wesley'' titles or imprints.

F. ''Silver Burdett Ginn Inc.'' is a Delaware corporation with its headquarters in Parisippany, New Jersey, and is one hundred percent owned (through various subsidiaries) by Viacom.

G. ''Viacom'' means defendant Viacom International Inc., a Delaware corporation with its headquarters in New York, New York, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Pearson, as a condition of the sale or other disposition of any or all of the Divestiture Products, shall require the Acquirer to agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Pearson is hereby ordered and directed, in accordance with the terms of this Final Judgment, within two (2) months from the date this Final Judgment is filed with the Court, or within ten (10) calendar days from the date on which the sixty-day notice-and-comment period established by 15 U.S.C. § 16(b) has expired, whichever is later, to divest one of the two Divestiture Products listed on Exhibit A to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calender days.

B. Pearson is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or within ten (10) calendar days from the date on which

the sixty-day notice-and-comment period established by 15 U.S.C. § 16(b) has expired, whichever is later, to divest all of the Divestiture Products listed on Exhibit B. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days.

C. Divestiture of the Divestiture Products shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Products can and will be operated by the Acquirer as viable, ongoing businesses. Divestiture of the Divestiture Products shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the publication and sale of the Divestiture Products and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products. Defendants are prohibited from entering into any agreement with the Acquirer to license exclusively any Divestiture Product to the Defendants for sale in the United States.

D. Pearson shall retain the right to use a Divestiture Product listed on Exhibit A to the extent necessary to fulfill the terms of agreements, in effect as of the date this Final Judgment is filed with the Court, with purchasers of the product lines listed on Exhibit A. The Acquirer of one of the Divestiture Products listed on Exhibit A shall grant Pearson a royalty-free license to continue to use that Divestiture Product to the extent necessary to fulfill the terms of such existing agreements. The Acquirer of any Divestiture Product that Pearson currently uses, in whole or in part, in any Retained Product, shall grant Pearson a royalty-free license to continue to use the Divestiture Product to the same extent in the production and sale of the Retained Product.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known, as expeditiously as possible, the availability of the Divestiture Products. The defendants shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective Acquirer, subject to customary confidentiality assurances, all reasonably necessary information regarding the Divestiture Products, except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Divestiture Products to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final judgment.

F. Defendants shall use all commercially practical means to enable the Acquirer of one of the Divestiture Products listed on Exhibit A to employ those personnel primarily responsible for the editorial content of that Divestiture Product, including editors, authors, and science experts. Defendants shall encourage and facilitate employment of such employees by the Acquirer of one of the Divestiture Products listed on Exhibit A, and shall remove all impediments that may deter these employees from accepting such employment.

G. Defendants shall make available to the Acquirer of any Divestiture Product, as applicable, information about any Pearson or Viacom employee primarily responsible for the editorial content of any Divestiture Product listed on Exhibit B, and any Pearson or Viacom employee primarily responsible for the production, design, layout, sale or marketing of any Divestiture Product. Defendants shall not interfere with any negotiations by the Acquirer to employ any such employee, but may make counter-offers for employment.

H. Pearson shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

V. Appointment of Trustee

A. In the event that Pearson has not divested a Divestiture Product within the time specified in Section IV.A or IV.B of this Final Judgment, Pearson shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States, in its sole discretion, to effect the divestiture of the Divestiture Products. Unless the United States otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy the United States that the Divestiture Products can and will be used by the Acquirer as viable on-going businesses. The divestiture shall be made to an Acquirer for whom it is demonstrated to the United States' sole satisfaction that the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products, and that none of the terms of the divestiture agreement interfere with the ability of the Acquirer to compete effectively in the publication and sale of the Divestiture Products.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Products. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of Pearson any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. Pearson may select which of the two Divestiture Products listed on Exhibit A shall be sold by the trustee, provided that the United States determines, in its sole discretion, that the Divestiture Product selected by Pearson has been developed and maintained at levels sufficient to ensure its competitive viability. Pearson shall provide the United States with information to enable the United States to make this determination. Should the United States determine, in its sole discretion, that the Divestiture Product selected by Pearson has not been developed and maintained at levels sufficient to ensure its competitive viability, the trustee shall sell the other Divestiture Product listed on Exhibit A.

D. The trustee shall serve at the cost and expense of Pearson, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Pearson and the trust shall then be

terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. Pearson and Viacom shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Pearson and Viacom, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted about acquiring any interest in any Divestiture Product, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Products.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed on the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, Pearson or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture pursuant to Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Pearson. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Products, together with full details of the same. Within fifteen (15) days after receipt of the notice, the United States may request additional information from Pearson, the proposed Acquirer, or any other third party concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Pearson or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request unless the parties agree otherwise. Within thirty (30) days after receipt of the notice or within twenty (20) days after the United States' receipt of the additional information, whichever is later, the United States shall notify in writing Pearson and the trustee, if there is one, stating whether it objects to the proposed divestiture. If the United States notifies in writing Pearson and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pearson's limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by Pearson under Section V.B, the proposed divestiture shall not be accomplished unless approved by the Court.

VII. Financing

Pearson shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by Section IV.A and IV.B of this Final Judgment have been accomplished:

A. Defendant shall take all steps necessary to ensure that each Divestiture Product will be maintained and developed as an independent, ongoing, economically viable and active competitor in its respective line of business and that the product management for all Divestiture Products, including the product development, marketing and pricing information and decision-making be kept separate and apart from, and not influenced by, Pearson's and Viacom's businesses in other products.

B. Defendants shall use all reasonable efforts to maintain and increase sales of the Divestiture Products, and shall maintain at 1998 or previously approved levels for 1999, whichever is applicable, development, promotional advertising, sales, marketing, and merchandising support for the Divestiture Products.

C. Defendants shall take all steps necessary to ensure that the Divestiture Products are fully maintained. Defendants shall not transfer or reassign those personnel primarily responsible for the editorial content of the Divestiture Products listed on Exhibit A, including editors, authors, and science experts. Each of defendants' employees whose predominant responsibility is the editorial content of any Divestiture Product listed on Exhibit B, or the production, design, layout, sale or marketing of any Divestiture Product shall not be transferred or reassigned to any other of defendants' products, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy, provided that defendants give the United States and Acquirer ten (10) days' notice of such transfer.

D. Defendants shall continue to fund and develop the Divestiture Products listed on Exhibit A as they would have been funded and developed without their transaction until one is sold pursuant to this Final Judgment.

E. Except as part of a divestiture approved by the United States, in its sole discretion, defendants shall not sell any Divestiture Products.

F. Defendants shall take no action that would jeopardize the sale of the Divestiture Products, or that would interfere with the ability of any Trustee to effect a sale of any Divestiture Product.

G. Defendants shall appoint a person or persons to manage the Divestiture Products, and who shall be responsible

for defendants' compliance with this section.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this action, and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or V of this Final Judgment, Pearson shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person, who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in all or any portion of the Divestiture Products, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Pearson has taken to solicit an Acquirer for any of the Divestiture Products and to provide required information to prospective Acquirers, including the limitation, if any, on such information.

B. Within twenty (20) calendar days of the filing of the Complaint in this action, Pearson shall deliver to the United States an affidavit that describes in reasonable detail all actions Pearson has taken and all steps Pearson has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The affidavit shall describe, but not be limited to, Pearson's efforts to maintain and operate the Divestiture Products as active competitors, maintain the management, staffing, research and development activities, sales, marketing and pricing of the Divestiture Products, and maintain the Divestiture Products in operable condition at current capacity configurations. Pearson shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Pearson's earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Until one year after a divestiture has been completed, or, if a divestiture is not completed, one year after the trust under Section V is terminated, Pearson shall preserve all records of all efforts made to preserve and divest the Divestiture Products.

X. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Pearson made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Pearson, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of Pearson and without restraint or interference from it, to interview, either informally or on the record, directors, officers, employees, and agents of Pearson, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Pearson at its principal offices, Pearson shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No informaiton nor any documents obtained by the means provided in this Section X shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proveedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Pearson to the United States, Pearson represents and identifies in writing the material in any such informaiton or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Pearson marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal rules of Civil Procedure,'' then the United States shall give ten (10) days' notice to Pearson prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Pearson is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modificaiton of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination of Provisions

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

Exhibit A

1. All textbooks or other educational materials offered for sale or provided or under development by any subsidiary or division of Silver Burdett Ginn Inc. that refer or relate to the subject matter of science for grades Kindergarten through six, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including, but not limited to workbooks, notebooks, charts, audio, video, software, CD–ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program. This Divestiture Product does not include any products that are necessary to fulfill the terms of agreements between Silver Burdett Gin Inc. and purchasers of products relating to the subject matter of science for grades Kindergarten through six that are in existence as of the date this Final Judgment is filed with the Court.

or

2. All textbooks or other educational materials offered for sale or provided or under development by any subsidiary or division of Pearson Inc. doing business as Scott Foresman Addison Wesley that refer or relate to the subject matter of science for grades Kindergarten through six, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including, but not limited to workbooks, notebooks, charts, audio, video, software, CD–ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test

generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program. This Divestiture Product does not include any products that are necessary to fulfill the terms of agreements between Pearson Inc. and purchasers of products relating to the subject matter of science for grades Kindergarten through six that are in existence as of the date this Final Judgment is filed with the Court.

EXHIBIT B

College course	Divestiture products
Abstract Algebra	Herstein, Abstract Algebra (Prentice Hall).
	Dummit/Foote, Abstract Algebra (Prentice Hall).
Anatomy & Physiology (One Term)	Tortora, Introduction to the Human Body: The Essentials of Anatomy and Physiology (Addison Wesley).
Anatomy & Physiology (Two Term)	Tortora/Grabowski, Principles of Anatomy and Physiology (Addison Wesley).
Art Appreciation	Fichner-Rathus, Understanding Art (Prentice Hall).
Circuits and Networks	Irwin, Basic Engineering Circuit Analysis (Prentice Hall).
	Johnson/Johnson/Hilbrun/Scott, Electric Circuit Analysis (Prentice Hall).
	Thomas/Rosa, The Analysis & Design of Linear Circuits (Prentice Hall).
	Johnson/Hilbrun/Johnson/Scott, Basic Electric Circuit Analysis (Prentice Hall).
Classical Mythology	Morford/Lenardon, Classical Mythology (Addison Wesley).
Classroom Management	Wolfgang, Solving Discipline Problems (Allyn & Bacon).
	Cangelosi, Classroom Management Strategies (Addison Wesley).
	Edwards, Classroom Discipline & Management (Prentice Hall).
	Burden, Classroom Management & Discipline (Addison Wesley).
Concrete Engineering	McCormac, Design of Reinforced Concrete (Addison Wesley).
	Wang/Salmon, Reinforced Concrete Design (Addison Wesley).
Controls Engineering	Nise, Control Systems Engineering (Addison Wesley).
	Kuo, Automatic Control Systems (Prentice Hall).
Environmental Economics	Goodstein, Economics and the Environment (Prentice Hall).
Fortran	Etter, Structured Fortran 77 for Engineers and Scientists (Addison Wesley).
	Etter, Fortran 90 for Engineers (Addison Wesley).
Human Anatomy	Tortora, Principles of Human Anatomy (Addison Wesley).
Human & Cultural Geography	Jordan-Bychkov/Domosh, The Human Mosaic: A Thematic Introduction to Cultural Geography (Addison Wesley).
Instructional Design	Smith/Ragan, Instructional Design (Merrill—Prentice Hall).
	Kemp/Morrison/Ross, Designing Effective Instruction (Merrill—Prentice Hall).
	Rothwell/Kazanas, Mastering the Instructional Design Process: A Systematic Approach (Jossey-Bass Publishers).
Intermediate Microeconomics	Browning/Zupan, Microeconomic Theory and Applications (Addison Wesley).
International Corporate Finance	Shapiro, Multinational Financial Management (Prentice Hall).
	Shapiro, Foundations of Multinational Financial Management (Prentice Hall).
International Economics	Salvatore, International Economics (Prentice Hall).
K–12 Curriculum	McNeil, Curriculum: A Comprehensive Introduction (Addison Wesley).
Manufacturing Engineering	Groover, Fundamentals of Modern Manufacturing (Prentice Hall).
	Degarmo/Black/Kohser, Materials and Processes in Manufacturing (Prentice Hall).
Mathematics for Elementary Teachers	Musser/Burger, Mathematics for Elementary Teachers (Prentice Hall).
Measurement and Assessment of Students	Kubiszyn/Borich, Educational Testing and Measurement (Addison Wesley).
Microbiology (Non-majors)	Black, Microbiology: Principles and Applications (Prentice Hall).
Multicultural Education	Banks/Banks, Multicultural/Education: Issues and Perspectives (Allyn & Bacon).
	Grant/Sleeter, Turning on Learning: Five Approaches for Multicultural Teaching Plans for Race, Class, Gender and Disability (Prentice Hall).
	Sleeter/Grant, Making Choices for Multicultural Education: Five Approaches to Race, Class, and Gender (Merrill—Prentice Hall).
Operating Systems	Silberschatz/Galvin, Operating System Concepts (Addison Wesley).
School Administration: Supervision	Acheson/Gall, Techniques in the Clinical Supervision of Teachers (Addison Wesley).
	Oliva/Pawlis, Supervision for Today's Schools (Addison Wesley).
Structural Engineering	McCormac/Nelson, Structural Analysis: A Classical & Matrix Approach (Addison Wesley).
Surveying	McCormac, Surveying Fundamentals (Prentice Hall).
Teaching Math to Elementary Students	Reys/Suydam/Linquist/Smith, Helping Children Learn Mathematics (Allyn & Bacon).
	Hatfield/Edwards/Bitter, Mathematics Methods for elementary and Middle School (Ally & Bacon).
	Sheffield/Cruikshank, Teaching and Learning Elementary and Middle School Mathematics (Merrill—Prentice Hall).
	Heddens, Today's Mathematics (Prentice Hall).
Teaching Reading to Secondary Students	Ruddell, Teaching Content Reading & Writing (Allyn & Bacon).
	Ryder, Reading and Learning in the Content Areas (Prentice Hall).
	Cooter/Flynt, Teaching Reading in Content Areas (Prentice Hall).
	Manzo/Manzo, Content Area Literacy (Merrill—Prentice Hall).
Technical Math	Calter, Technical Mathematics (Prentice Hall).
Technical Math with Calculus	Calter, Technical Mathematics with Calculus (Prentice Hall).
Technical Writing	Houp, Reporting Technical Information (Allyn and Bacon).

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 23, 1998, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Pearson plc and its wholly subsidiary, Pearson Inc. (collectively ''Pearson''), of certain publishing businesses of Viacom International Inc. (''Viacom'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that 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 elementary school science programs and in the development, marketing, and sale of textbooks used in thirty-two college courses. Unless the acquisition is blocked, competition for these science programs and college textbooks would be substantially lessened, leading to higher prices, a reduction in the value of materials or service provided to teachers and students, or lower quality. The request for relief in the Complaint seeks: (1) a judgment that the proposed merger would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing consummation of the merger agreement; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

Shortly before the Complaint was filed, the parties reached a proposed settlement that permits Pearson to complete its acquisition of Viacom's publishing businesses, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. Along with the Complaint, the parties filed a Stipulation and proposed Final Judgment setting out the terms of the settlement.

The proposed Final Judgment orders Pearson to divest either its or Viacom's existing elementary school science program, along with the program that that party is currently developing, to an acquirer acceptable to the United States. Unless the United States agrees to a time extension, Pearson must complete this divestiture within two months of the filing of the Complaint, or within ten days of the expiration of the sixty-day statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement, whichever is later. The proposed Final Judgment also orders Pearson to divest fifty-five college textbooks so that competition in the development, marketing, and sale of textbooks in each of the thirty-two courses will be preserved. Pearson must complete the college textbook divestiture within five months of the filing of the Complaint, or within ten days of the expiration of the sixty-day statutory notice-and-comment period, whichever is later.

If Pearson does not complete the divestitures within the appropriate time periods, the Court, upon application of the United States, is to appoint a trustee selected by the United States to complete the remaining divestitures. The proposed Final Judgment also requires Pearson and Viacom to take all steps necessary to maintain and market the products to be divested as independent and active competitors until the divestures mandated by the proposed Final Judgment have been accomplished.

The plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Pearson Inc. is a Delaware corporation headquarters in New York City, that publishes textbooks and other educational materials under such names as Addison Wesley, Scott Foresman and Harper Collins. Its parent, Pearson plc, is an international media corporation incorporated in the United Kingdom and based in London.

Viacom, a Delaware corporation based in New York City, publishes textbooks and other educational materials under names including 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.

On May 17, 1998, the defendants signed an agreement under which Pearson would acquire educational, professional, and reference publishing businesses from Viacom. This transaction, which would increase concentration in already concentrated markets, precipitated the government's suit.

B. Product Markets

1. Basal Elementary School Science Program Market

a. Description of the Market

Most elementary schools throughout the United States 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 subject. Student textbooks and teacher's editions of the textbooks are the core of most basal programs, but most also include other important educational materials and services called ''ancillary'' materials, consisting of student workbooks and notebooks, audio-visual aids such as charts and videotapes, and materials for student science exercises and experiments. Basal elementary school science programs also often include services such as teacher training sessions.

School districts or 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 and services provided with them. 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 any of the few nontraditional, alternative science programs in sufficient numbers to defeat a small but significant price increase in basal elementary school science programs.

b. Harm or Competition as a Consequence of the Merger

Pearson and Viacom are two of only four larger publishers of basal elementary school science programs. They have consistently led the market, capturing a combined share of roughly fifty percent or more of new sales over the last six years, Pearson's *Discover the Wonder* program is a close substitute for Viacom's *Discovery Works* program. Pearson and Viacom also compete to maintain a improve program quality. Both are currently developing new basal elementary school science programs that they will offer for sale throughout the United States beginning in 1999.

Pearson and Viacom's aggressive competition has led to lower prices, more and better ancillary materials and services, and improvements in product

quality. The proposed acquisition would eliminate this competition and would further concentrate an already highly concentrated market.

Successful entry into the basal elementary school science program market is difficult, time consuming, and costly. A publisher would need to assemble an editorial and sales staff to develop, test, and market the new program, and would need to overcome schools' reluctance to purchase an elementary school science program from a firm lacking an established reputation as an experienced and reliable science publisher. Additionally, the science market is less attractive to new entrants because elementary school science funding is neither as large nor as reliable as it is for core subjects like math and reading.

The Complaint alleges that the transaction would likely have the following effects:

a. actual and future competition between Pearson and Viacom would be eliminated;

b. competition generally in the market for basal elementary school science programs would likely be substantially lessened;

c. prices for basal elementary school science programs would likely increase or the value of ancillary materials or services would likely decline; and

d. competition in the development and improvement of basal elementary school science programs would likely be substantially lessened.

2. College Textbook Markets

a. Description of the Markets

College professors generally select a textbook to serve as the primary teaching material for their course. Textbooks provide the core written material for a course, serve as the foundation for the professor's overall lesson plan, and set forth the framework for class discussions. Although it is the professor that chooses the textbook, students purchase the textbooks, usually from a college bookstore.

Publishers often attempt to induce a professor to select their textbooks by offering 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. Publishers also sometimes offer textbooks to students as part of discounted packages that include further ancillary educational materials such as CD–ROMs and study guides.

The Complaint identified thirty-two college courses in which Pearson and Viacom were among the leading competitors in the provision of textbooks and related educational materials. These courses primarily fell within the disciplines of biological sciences, engineering, economics, teachers' education, mathematics and computer science. In each of these courses, textbooks are used as the primary teaching materials. A small but significant increase in the price of a textbook for a college course—or a small but significant decrease in the value of the ancillary materials provided with the textbook—would not cause a significant number of professors or students to switch to any alternative products. Used textbooks also cannot defeat an increase in price of new textbooks or a decrease in the supply of ancillaries provided with them. The supply of used textbooks is limited, and professors usually require use of the newest edition of a textbook, which is generally revised every three to four years.

b. Harm to Competition as a Consequence of the Merger

In each of the thirty-two college textbook markets identified in the Complaint, Pearson and Viacom compete vigorously by offering textbooks that are close substitutes. Together, they account for a major share of new textbook sales, and face significant competition from only a small number of other publishers.

Competition between Pearson and Viacom has resulted in lower prices, more and better ancillary materials for professors and students, and improved product quality. The proposed acquisition would eliminate this competition, give Pearson the ability to raise the price or reduce the value of materials, and would further concentrate these already highly concentrated markets.

In each of the thirty-two college textbook markets, there is unlikely to be timely entry by any company offering textbooks and ancillary materials that would be sufficient to defeat an anticompetitive increase in price or decrease in ancillary materials. Successful entry involves a costly and time-consuming process in which a publisher must locate an author qualified to write a new textbook, and assemble an editorial staff to edit and develop the textbook. In addition, it must have numerous professors to review the textbook and a large sales staff to market it. Entry is also impeded by the difficulty of challenging the reputation of successful incumbent textbooks.

The Complaint alleges that the transaction would likely have the following effects:

a. actual and future competition between Pearson and Viacom would be eliminated;

b. competition generally in the markets for the sale of textbooks and ancillary materials for each of the college courses identified in the Complaint would likely be substantially lessened;

c. prices for textbooks and ancillary materials for each of the college courses identified in the Complaint would likely increase or the value of ancillary materials would likely decline; and

d. competition in the development and improvement of college textbooks and ancillary materials in each of the college courses identified in the Complaint would likely be substantially lessened.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects of Pearson's proposed acquisition of publishing businesses from Viacom.

The proposed Final Judgment requires divestiture of either Pearson's or Viacom's basal elementary school science program to an acquirer acceptable to the United States within two months after the filing of the proposed Final Judgment in this matter, or within ten days after the expiration of the sixty-day statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement in the Federal Register, whichever is later. This divestiture includes all textbooks or other educational materials offered for sale or provided or under development that refer or relate to the subject matter of science for elementary school grades, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including but not limited to workbooks, notebooks, charts, audio, video, software, CD–ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program.

Pearson also must divest the fifty-five college textbooks identified on Exhibit B to the proposed Final Judgment. That

exhibit specifies the one or more textbooks in each course that must be divested to ensure that each college textbook market suffers no reduction in competition. The college textbook divestitures must be completed within five months after the filing of the proposed Final Judgment in this matter, or within ten days after the expiration of the sixty-day statutory notice-and-comment period, whichever is later. Until the divestitures takes place, Pearson is required to develop and maintain its and Viacom's products as independent ongoing, economically, viable, and active competitors, and to continue to fund their development, promotional advertising, sales, marketing, merchandising, and support.

If Pearson fails to make the required divestitures within the applicable time periods, the Court will appoint a trustee selected by the United States to effect the divestitures. Pearson may select which basal elementary school science program the trustee will divest, so long as that program has been developed and maintained at a level sufficient to ensure its competitive viability. If the United States determines, in its sole discretion, that Pearson has not adequately developed and maintained that program's competitive viability, the trustee will sell the other program.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

The proposed Final Judgment takes steps to ensure that the acquirers of the divested products will be viable and effective competitors. The United States must be satisfied that the acquiring parties have the ability and intention to publish and market the divested products as viable, ongoing businesses. The proposed Final Judgment also directs Pearson to use all commercially practical means to enable the acquirer of the basal elementary school science program to hire the personnel primarily responsible for the program's editorial content, including editors, authors, and science experts, and to encourage and facilitate their employment by the acquirer. Prior to divestiture, Pearson also may not transfer any of these employees to new positions within the company. The proposed Final Judgment also requires that Pearson provide acquirers with information about the employees responsible for the editorial content of the college textbooks to be divested, and about the employees primarily responsible for the production, design, layout, sale or marketing of all of the divested products. The proposed Final Judgment forbids Pearson and Viacom from interfering with any acquirer's employment negotiations with those employees, and from transferring some of these employees—those spending the predominant portion of their time on a divestiture product—to new positions prior to the divestitures.

The proposed Final Judgment requires sale of all the tangible and intangible assets that make up each divestiture product. It expressly defines each divestiture product to include all associated intellectual property, licenses, contracts, artwork, promotional and advertising materials, customer lists, and research data. The intellectual property specifically includes the titles of all existing products to be acquired, but not trademarks or trade names that refer to Pearson or Viacom. Exhibit A of the proposed Final Judgment identifies in detail the specific items (including student editions, teacher editions, and ancillary materials) that are included within the basal elementary school science program that Pearson must divest. It provides, however, that Pearson may continue to use the divested basal elementary school science program to the extent necessary to fulfill its or Viacom's obligations under existing contracts with purchasers. These obligations consist mainly of the provision of replacement copies of consumable workbooks or lost or damaged textbooks. The proposed Final Judgment requires that the acquirer grant Pearson a royalty-free license so that it may continue to use the divested basal elementary school science program for this limited purpose.

The proposed Final Judgment is thus designed to maintain the present level of competition in the market for basal elementary school science programs and in the thirty-two college textbook markets identified in the Complaint by replacing the competitor eliminated as a result of the merger with one or more that is equally effective. It accomplishes this goal by requiring prompt divestitures so that the acquirer has adequate time to participate in the significant upcoming sales opportunities in schools and colleges, by providing the acquirer with an opportunity to employ the personnel that are critical to the success of the divested products, and by requiring divestiture of all tangible and intangible assets that make up each of those products.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains

jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Pearson and Viacom. The United States is satisfied that the divestiture of the assets specified in the proposed Final Judgment will facilitate continued viable competition in the market for basal elementary school science programs and in the thirty-two markets for college textbooks identified in the Complaint. The United States is satisfied that the proposed relief will prevent the merger from having anticompetitive effects in these markets. The divestitures required by the proposed Final Judgment will preserve the structure of the markets that existed prior to the merger and will preserve the existence of independent competitors.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert, denied,* 454 U.S. 1083 (1981). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

FOR PLAINTIFF UNITED STATES OF AMERICA

Dated: December 10, 1998.

Respectfully submitted,

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–44]

Melvin N. Seglin, M.D. Continuation of Registration

On August 21, 1996, the then-Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Melvin N. Seglin, M.D. (Respondent) of Evanston, Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS4328274, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. 823(f), for reason that he has been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a).

By letter dated August 29, 1996, Respondent, acting *pro se,* filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on April 9 and 10, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact,

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[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel,* 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).