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

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| v. | : | Civil Action No. 99-0652 (JR) |
| | : | |
| CENTRAL PARKING CORPORATION, *et al.*, | : | |
| | : | |
| Defendants. | : | |

FILED
FEB 14 2000
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**MEMORANDUM**

Before the Court for the public interest determination required by the Tunney Act is a proposed final judgment giving effect to the terms of an antitrust consent decree between and among the United States Government, Central Parking Corporation ("Central"), and Allright Holdings, Inc. ("Allright"). It appears, upon examination in light of the violations charged in the complaint, that the terms of the decree are not ambiguous, that the proposed enforcement mechanism is adequate, that third parties will not be "positively injured," and that the decree does not make a mockery of judicial power. The final judgment is accordingly **approved**.

FACTS

Central and Allright, the two largest parking management facilities in the United States and two of only four such facilities with a nationwide presence, entered into an agreement whereby Allright would become a wholly owned subsidiary of Central, which would continue as the surviving entity in

structure and in name. The Department of Justice objected to the transaction, taking the position that the proposed merger would result in a substantial increase in market concentration, with the merged entity possessing a dominant market share, in violation of Section 7 of the Clayton Act (15 U.S.C. § 18 (1994)). (Complaint filed March 16, 1999, at 2.)

The consent decree proposed by the parties resolves the government's antitrust objections by requiring Central to divest certain parking facilities within one hundred and fifty (150) calendar days of the filing of the Complaint, or within five (5) days of notice of entry of the final judgment, whichever is later. Central has already begun the process of divestiture, with the government's approval. These steps were taken immediately after the filing of the proposed consent decree and without awaiting Tunney Act approval. Nevertheless, the Tunney Act (Antitrust Procedures and Penalties Act, codified as 15 U.S.C. § 16 (a)-(i)(1994)) requires that, before this fait accompli can be blessed by the entry of a final judgment, it must be found to be in the public interest.

The parties have scrupulously adhered to the "sunshine" requirements of the Tunney Act: The proposed final judgment was duly published in the Federal Register. See 64 Fed. Reg. 15795 (1999). The sixty-day period for the submission of public comments elapsed. No comments were received.

## ANALYSIS

The Tunney Act provides that, when making the required public interest determination, the court may consider:

> (1) the competitive impact of such judgment, including termination of the 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)(1)-(2).

The requirement of a public interest determination was added to the Tunney Act in 1974 by amendments enacted in part to remedy the practice of "judicial rubber stamping" of proposals submitted by the Justice Department.[1] Appellate decisions issued since 1974, however, have made it clear that the public interest inquiry authorized by the Tunney Act is so limited in scope as to be very nearly a ministerial task. "Public interest" is to be defined in accordance with antitrust laws. United States v. AT&T, 552 F. Supp. 131, 149 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). Settlements that fall "within the reaches of the public interest" should be

---

[1] See H.R. Rep. No. 93-1463, at 8-9, 12 (1974).

approved. United States v. Western Electric Co., 900 F.2d 283, 309 (D.C. Cir. 1990)(emphasis in original)(citing and quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981), in turn quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D.Mass. 1975)). The court is not to review allegations and issues that were not contained in the government's complaint, United States v. Microsoft Corp., 56 F.3d 1448, 1459 (D.C. Cir. 1995), or base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint, United States v. BNS Inc., 858 F.2d 456, 462-63 (9th Cir. 1988).

The role that remains for a district court is to "examine the decree in light of the violations charged in the complaint and . . . withhold approval only [a] if the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.'" Massachusetts School of Law at Andover, Inc. v. United States, 118 F.3d 776, 783 (D.C. Cir. 1997)(quoting Microsoft at 1462)(emphasis added).

a. Clarity or ambiguity of the decree

The proposed final judgment sets forth specific and precise remedies for the antitrust concerns identified in the government's complaint. It requires the divestiture of 74 off-

street parking facilities owned, leased, or managed by Central and Allright in 18 cities. (Final J. at Schedules A & B). It specifies, by location and facility name, what must be divested. (Id.). The final judgment is not ambiguous.

b. Adequacy of the enforcement mechanism

The proposed final judgment ensures that the Court will have the jurisdiction and "power to ensure that the parties comply in full with the principles mandated by the decree . . . in their conduct after divestiture." AT&T, 552 F. Supp. at 214. Its compliance mechanisms are adequate.

c. Impact upon third parties

The complaint identifies off-street parking competitors and off-street parking consumers as parties likely to suffer antitrust injury from the lessening of competition in the parking facility management market. (Complaint at 2). By requiring divestiture to companies that will be viable competitors, the final judgment will ensure that such injury does not occur.

Moreover, no comments were submitted to the Justice Department in response to publication of the proposed final judgment, and this Court accepts that as further evidence that the proposed settlement is in the public interest.

d. Reasonableness of proposed remedies

The proposed final judgment does not "make a mockery of judicial power."

The final judgment presented by the parties has been signed and accompanies this memorandum.

JAMES ROBERTSON
United States District Judge

Dated: February 11, 2000

Copies to:

Joseph M. Miller
U.S. Department of Justice
Antitrust Division
1401 H Street, N.W.
Suite 4000
Washington, DC 20530

Counsel for United States

David Marx Jr.
McDermott, Will & Emery
227 West Monroe Street
Chicago, IL 60606

James H. Sneed
McDermott, Will & Emery
600 - 13th Street, N.W.
Washington, DC 20005-3096

Counsel for Defendant Central Parking Corporation

Michael L. Weiner
Skadden, Arps, Slate, Meagher & Flom L.L.C.
919 Third Avenue
New York, NY 10022

Counsel for Defendant Allright Holdings, Inc.