

UNITED STATES DISTRICT COURT
NORTH DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
Plaintiff, : 76-CV-170
 :
v. : COMPETITIVE IMPACT
 : STATEMENT RELATING
CARROLS DEVELOPMENT CORPORATION; and : TO PROPOSED
TRIPLE SCHUYLER ROME CORPORATION, : CONSENT JUDGMENT
 :
Defendants. : *filed: JUL 25 1977*
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This Competitive Impact Statement is filed by the Government pursuant to the requirements of Section 2 of the Act of Congress of December 21, 1974 (15 U.S.C. § 16), commonly known as the Antitrust Procedures and Penalties Act. It relates to the proposed consent judgment submitted for entry against the defendants in this civil antitrust suit.

NATURE AND PURPOSE OF THE PROCEEDING

On April 23, 1976, the Government filed a civil antitrust suit charging that the acquisition by Carrols Development Corporation of the motion picture theatres in Syracuse and Utica, New York, operated by Kallet Realty, Inc. and its subsidiaries (Kallet) in February 1974, and the acquisition by Carrols Development Corporation and its wholly-owned subsidiary Triple Schuyler Rome Corporation (both are referred to collectively herein as CDC), of the motion picture theatres in Utica, New York operated by Hallmark Releasing Corp. (Hallmark), in March 1974, substantially lessened competition in the purchase of licenses to exhibit feature motion pictures in the Greater Syracuse and Greater Utica areas, in violation of Section 7 of the Clayton Act.

In its complaint, the Government asked the Court to declare the acquisitions to be violative of Section 7 of the Clayton Act and to order CDC to divest itself of all of the assets acquired from Kallet and Hallmark in the Greater Syracuse and Greater Utica areas.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

This suit concerns the purchase of licenses to exhibit feature motion pictures. Such licenses are purchased from distributors by exhibitors or operators of motion picture theatres, in competition with other exhibitors in the same area.

At the time of the Kallet acquisition, CDC was the largest exhibitor in the Greater Syracuse Area with ten theatres which accounted for approximately 55.7 percent of the theatres and 59 percent of the gross box office receipts in that area.* Kallet, the second largest exhibitor with three theatres, accounted for about 16.8 percent of all motion picture theatres in the Greater Syracuse Area at that time and 27 percent of the gross box office receipts. Kallet was also the second largest theatre operator in the Greater Utica Area with four theatres or approximately 33 percent of all theatres in that area and 44 percent of gross box office receipts.** CDC did not operate any motion picture theatres in the Greater Utica Area at that time.

At the time of the Hallmark acquisition, Hallmark was the largest exhibitor in the Greater Utica Area with six theatres, which accounted for 50 percent of the theatres in that area and approximately 36 percent of gross box office receipts.

The Government alleges that the acquisition of the Kallet theatres eliminated actual competition for film licenses between Kallet and CDC in the Greater Syracuse Area, and potential competition between them in the Greater Utica Area. Although CDC did not operate any theatres in the Greater Utica Area prior to the acquisition, it had entered into an agreement

*The Greater Syracuse Area encompasses the area within a radius of approximately twelve miles from the center of the City of Syracuse, including Syracuse and all or part of the towns of Salina, DeWitt, Geddes, Cicero, Manlius, Pompey, Lafayette, Onondaga, Marcellus, Camillus, Van Buren, Lysander and Clay.

**The Greater Utica Area encompasses the area within a radius of approximately ten miles from the center of the City of Utica, including Utica and all or part of the towns of Schuyler, Newport, Frankfort, Litchfield, Paris, New Hartford, Kirkland, Whitestown, Westmoreland, Floyd, Marcy, Trenton and Deerfield.

for the construction of a multi-screen theatre in Utica and was, therefore, at that time the most likely entrant into the operation of motion picture theatres in that area. In addition, the Government claims that the acquisition of Kallet's theatres in the Greater Syracuse Area has significantly enhanced CDC's bargaining power with distributors to the detriment of independent exhibitors in the area.

The Government further alleges that the acquisition of the Hallmark theatres has resulted in the elimination of actual competition for film licenses between Hallmark and CDC in the Greater Utica Area. The Government also claims that CDC's bargaining power with distributors has been significantly enhanced to the detriment of independent exhibitors in the area.

THE PROPOSED CONSENT JUDGMENT AND
ITS ANTICIPATED EFFECTS ON COMPETITION

Under the proposed consent judgment ^{CDC}~~UATC~~ must divest the twelve designated theatres located in the Greater Syracuse and Greater Utica Areas. Together with one former Kallet theatre already voluntarily divested by CDC during the pendency of this suit this will represent a total divestiture of all of the former Kallet and Hallmark theatres which CDC acquired in the Greater Syracuse and Greater Utica Areas. The proposed judgment will, thus, eliminate the additional bargaining power which CDC obtained as a result of the acquisitions. The divestitures will also increase competition in these areas.

The proposed judgment requires CDC to divest each of the designated theatres by sublease or assignment to persons and under terms and conditions approved by the Government or the Court. All of the theatres must be divested for theatre purposes. The proposed judgment protects against CDC reacquiring operating control of any of the theatres which it divests.

Under the proposed judgment CDC would be obliged to make reports to the Government every 90 days setting forth the steps taken to accomplish the divestitures. In order to assure to the extent possible that the designated theatres will be successfully divested, the proposed judgment provides for the appointment of a trustee by the Court if CDC has not divested all of the theatres within twenty-four months. The trustee would be appointed to divest the remaining theatres and would serve at the cost and expense of CDC.

The proposed judgment prohibits CDC, for ten years, from acquiring any operating theatre in the Greater Syracuse or Greater Utica Areas except with the approval of the Government. This provision protects against acquisitions by CDC in these areas which would be detrimental to competition. In addition, the Government would have visitation rights to inspect documents and interview officers and employees of CDC in order to determine and secure compliance with the judgment.

ALTERNATIVES TO THE PROPOSED JUDGMENT
CONSIDERED BY THE GOVERNMENT

The proposed consent judgment provides substantially all of the relief prayed for in the complaint. No alternative to the judgment has been considered by the Department of Justice.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation between the Government and CDC which provides that the Government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for

the Court's retention of jurisdiction of this action in order, among other reasons, to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by Section 2 of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), any person wishing to comment upon the proposed judgment may, for a sixty-day period prior to the effective date, submit written comments to the United States Department of Justice, Attention Bernard Wehrmann, Chief, New York Office, Antitrust Division, 26 Federal Plaza, New York, New York 10007. Such comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

DETERMINATIVE DOCUMENTS

There are no materials or documents which the Government considered determinative in formulating the proposed consent judgment. Therefore, none is being filed with this competitive impact statement.

Dated: JUL 25 1977

ERWIN L. ATKINS
Attorney
Department of Justice