

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
325 7th Street, N.W., Suite 300
Washington, DC 20530,

Plaintiff,

v.

BAIN CAPITAL, LLC
111 Huntington Ave.
Boston, MA 02199,

and

THOMAS H. LEE PARTNERS, L.P.
100 Federal St. 35th Fl.
Boston, MA 02110,

and

CLEAR CHANNEL
COMMUNICATIONS, INC.
200 E. Basse Rd.
San Antonio, TX 78209,

Defendants.

Case: 1:08-cv-00245
Assigned To : Robertson, James
Assign. Date : 2/13/2008
Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Clear Channel Communications Inc. ("Clear Channel") by a private equity group of investors led by Bain Capital, LLC ("Bain") and Thomas H. Lee Partners, L.P. ("THL"), and to obtain other relief as appropriate. Plaintiff United States alleges as follows:

I. Nature of the Action

1. Bain and THL, two of the world's leading private investment firms, are planning to acquire, each through various affiliated funds, substantial ownership interests in Clear Channel, the largest operator of radio stations in the United States (the "transaction"). The anticipated value of the transaction is \$28 billion.

2. After the transaction, Bain and THL each would control at least 35 percent of the voting interests in Clear Channel and each would designate four members to the 12 member Clear Channel Board of Directors. Together, Bain and THL would control at least 70 percent of the voting interests of Clear Channel and designate two-thirds of the members of its Board of Directors. Further, Bain and THL, either directly or indirectly through management teams they install, typically manage and operate the assets in which they invest.

3. Bain and THL, through affiliated funds and co-investment vehicles, have substantial ownership interests in Cumulus Media Partners LLC ("CMP"), another large nationwide operator of radio stations. Bain and THL each control 25 percent of the voting interests of CMP and designate two members to its eight member Board of Directors. Together, Bain and THL control 50 percent of the voting interests of CMP and designate one-half of the members of its Board of Directors. CMP operates radio stations that compete head-to-head with Clear Channel radio stations in Cincinnati, Ohio and Houston/Galveston, Texas ("Houston").

4. After the transaction, Bain and THL would have governance rights in Clear Channel and CMP sufficient to enable Bain and THL, individually or together, to control or influence the companies' competitive decisions to produce an anticompetitive outcome in markets where both Clear Channel and CMS are significant competitors. Accordingly, Bain's and THL's

acquisitions of substantial partial ownership interests in Clear Channel would substantially lessen competition between Clear Channel and CMP in the sale of radio advertising in Cincinnati and Houston in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. THL, through affiliated funds and co-investment vehicles, currently holds a 20 percent equity interest and a 14 percent voting interest in Univision Communications, Inc. ("Univision"), a large nationwide operator of radio stations that broadcast primarily in Spanish-language format. THL designates three members to Univision's 17 member Board of Directors. Univision operates radio stations that compete head-to-head with Clear Channel's Spanish-language radio stations in Houston; Las Vegas, Nevada; and San Francisco, California.

6. After the transaction, THL would have governance rights in Clear Channel and Univision sufficient to influence the companies' competitive decisions to produce an anticompetitive outcome in markets where both Clear Channel and Univision are significant competitors. Accordingly, THL's acquisition of a substantial partial ownership interest in Clear Channel would substantially lessen competition in the sale of Spanish-language radio advertising in Houston, Las Vegas, and San Francisco in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Jurisdiction and Venue

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

8. Bain and THL, through CMP and Univision, and Clear Channel sell radio advertising to local and national advertisers, a commercial activity that substantially affects and is

in the flow of interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. §§ 25, 26, and 28 U.S.C. §§ 1331, 1337.

9. Bain, THL, and Clear Channel transact business within the District of Columbia. Venue is therefore proper in this Court pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391.

III. Defendants and Other Relevant Entities

10. Clear Channel is a diversified media company incorporated in Texas and headquartered in San Antonio, Texas. Clear Channel owns various media outlets including radio stations, domestic and international outdoor advertising assets, television stations, and a media representation firm. Radio broadcasting is Clear Channel's largest business segment, representing over 50 percent of Clear Channel's total revenue. As of February 5, 2008, Clear Channel owned 833 radio stations in the United States, 508 of which were located within the top 100 markets as ranked by Arbitron, an international media marketing and research firm, including stations in Cincinnati, Houston, Las Vegas, and San Francisco.

11. Bain is a Delaware limited liability company headquartered in Boston, Massachusetts. Bain is one of the world's leading private investment firms with over \$40 billion in assets under management.

12. THL is a Delaware limited partnership headquartered in Boston, Massachusetts and also is one of the world's leading private investment firms. THL currently manages approximately \$12 billion of committed capital.

13. Bain and THL raise pools of capital from private investors, controlling and managing that capital through private equity funds and co-investment vehicles that invest in discrete opportunities, such as venture capital, public equity, and leveraged debt assets.

14. CMP is a limited liability company formed in 2005 that is owned by Bain, THL, Cumulus Broadcasting Inc., the Blackstone Group, and their affiliates. As of February 5, 2008, CMP owned 34 radio stations in various markets, including Cincinnati and Houston.

15. Univision is headquartered in New York City and is the largest broadcaster of Spanish-language television programming in the United States. Univision also owns 70 radio stations that broadcast in Spanish language in various markets, including Houston, Las Vegas, and San Francisco. Univision is owned and operated by five private equity firms: THL, Haim Saban, TPG Capital, Providence Equity, Madison Dearborn, and their affiliates.

IV. The Proposed Acquisition

16. Clear Channel, Bain, and THL have agreed that funds and co-investment vehicles under the direction of Bain (collectively "Bain CC Affiliates") and funds and co-investment vehicles under the direction of THL (collectively "THL CC Affiliates") will purchase a controlling interest in Clear Channel. Under their proposal, Bain and THL each will acquire at least a 35 percent voting and economic interest in Clear Channel, with the remaining interest of up to 30 percent staying in the hands of those current Clear Channel investors and option-holders who elect to retain an equity interest in Clear Channel rather than to receive cash for their shares and/or stock options. Under the purchase arrangement, Bain and THL, through Bain CC Affiliates and THL CC Affiliates, each will also acquire the right to designate four directors of the 12 member Clear Channel Board of Directors. If the transaction is consummated, Bain and THL

together will control at least 70 percent of the voting interests of Clear Channel and designate two-thirds of the members of the Board of Directors.

V. Relevant Markets

A. Relevant Product Markets

17. *Radio Advertising.* Radio stations employ various formats for their programming, such as Adult Contemporary, Sports, or Rock. A station's format can be important in determining the size and characteristics of its listening audience. Companies that operate radio stations, like Clear Channel, CMP, and Univision, sell advertising time to local and national advertisers in each geographic market where they operate those stations. Advertising rates charged by a radio station are based primarily on the station's ability to attract listening audiences having certain demographic characteristics in the market area that advertisers want to reach, as well as on the number of stations and the relative demand for radio in the market.

18. Many local and national advertisers purchase radio advertising time because they consider it preferable to advertising in other media to meet their specific needs. They may consider radio advertising time to be more cost-effective than other media to reach their target audiences. They may also consider radio advertising to be more efficient than other media to reach their target audiences. Additionally, radio stations render certain services or promotional opportunities to advertisers that the advertisers cannot exploit as effectively using other media. For these reasons, many local and national advertisers who purchase radio advertising time view radio as a necessary advertising medium, sometimes as a complement to other media. A substantial number of advertisers with strong radio preferences would not turn to other media if faced with a small but significant increase in the price of advertising time on radio stations.

19. Radio stations generally can identify advertisers with strong radio preferences. Radio stations also negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Because of this ability to price discriminate among customers, radio stations may charge higher prices to the substantial number of advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

20. In the event of a price increase in radio advertising time, some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time. However, the existence of such advertisers would not prevent radio stations from profitably raising their prices by a small but significant amount for a substantial number of advertisers that would not switch.

21. Accordingly, the provision of advertising time on radio stations is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

22. *Spanish-language Radio Advertising.* In markets with a large Hispanic population, many local and national advertisers also consider Spanish-language radio to be particularly effective or necessary to reach their desired customers, particularly consumers who listen predominantly or exclusively to Spanish-language radio. A substantial number of these advertisers consider Spanish-language radio, either alone or as a complement to other media, to be the most effective way to reach their target audience, and do not consider other media, including non-Spanish-language radio, to be a reasonable substitute. These advertisers would not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio.

23. Accordingly, the provision of advertising time on Spanish-language radio stations to these advertisers is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Markets

24. Local and national advertisers buy radio advertising time on Clear Channel, CMP, and Univision radio stations within areas defined by an Arbitron Metro Survey Area ("MSA"). An MSA is the geographic unit that is widely accepted by radio stations, advertisers, and advertising agencies as the standard geographic market to use in evaluating radio audience size and composition.

25. Local and national advertising that is placed on radio stations in an MSA is aimed at reaching listening audiences in that MSA. Radio stations in other MSAs do not provide effective access to these audiences. If there were a small but significant price increase within an MSA, an insufficient number of advertisers would switch their advertising time purchases to radio stations outside the MSA to make the price increase unprofitable.

26. In the Houston and Cincinnati MSAs, Clear Channel and CMP stations compete against each other and against other stations in the provision of radio advertising time to advertisers, regardless of the language broadcast over the station. If there were a small but significant increase in radio advertising prices within the Houston or Cincinnati MSA, an insufficient number of advertisers seeking to reach listeners in the Houston or Cincinnati MSA would switch their advertising time purchases to radio stations outside that MSA to make the price increase unprofitable. Accordingly, the Houston and Cincinnati MSAs (the "Overlap Markets") are each relevant geographic markets within the meaning of Section 7 of the Clayton Act.

27. In the Houston, Las Vegas, and San Francisco MSAs, Clear Channel and Univision compete against each other in the provision of Spanish-language radio advertising time to advertisers. If there were a small but significant increase in Spanish-language radio advertising prices in the Houston, Las Vegas, or San Francisco MSAs, an insufficient number of advertisers seeking to reach listeners in the any of those MSAs would switch their Spanish-language advertising purchases to radio stations outside that MSA to make the price increase unprofitable. Accordingly, the Houston, Las Vegas, and San Francisco MSAs (the “Spanish-language Overlap Markets”) are each relevant geographic markets within the meaning of Section 7 of the Clayton Act.

VI. Harm to Competition

A. Competition in the Relevant Geographic Markets

1. Radio Advertising in the Overlap Markets

28. Advertisers who use radio to reach their target audience select radio stations on which to advertise based upon a number of factors including, among others, the size of the station’s audience and the characteristics of its audience. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose listening audience is highly correlated to their target audience.

29. Clear Channel and CMP vigorously compete for listeners and closely monitor each other’s competitive position in the Cincinnati and Houston MSAs. Their stations are similarly formatted and programmed with an eye toward attracting listeners from each other.

30. Clear Channel and CMP stations in Houston and Cincinnati also currently compete vigorously for radio advertisers who seek to reach the specific demographic groups listening to

their stations. For many local and national advertisers buying radio advertising time in the Houston and Cincinnati markets, Clear Channel and CMP stations are each other's next best substitutes. During individualized rate negotiations, the substantial number of advertisers who desire to reach these listeners can benefit from this competition by "playing off" Clear Channel and CMP stations against each other to reach better terms.

31. Radio station ownership in Houston and Cincinnati is highly concentrated, with Clear Channel and CMP's combined listener share exceeding 34 percent in Houston and 59 percent in Cincinnati. Additionally, Clear Channel and CMP's combined advertising revenue share exceeds 37 percent in Houston and 65 percent in Cincinnati.

32. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, concentration in these markets would increase significantly as a result of the acquisition, with post-acquisition HHIs of approximately 2,100 in Houston and approximately 4,700 in Cincinnati, well above the 1,800 threshold at which the Department normally considers a market to be highly concentrated.

2. Spanish-Language Radio Advertising Overlap Markets

33. Clear Channel and Univision are currently vigorous competitors and closely monitor each other's competitive position for Spanish-language listeners in the Houston, Las Vegas, and San Francisco MSAs, each of which has a large Hispanic population. Their stations in these markets are similarly formatted and programmed with an eye toward attracting Spanish-language listeners from each other.

34. Clear Channel and Univision stations also currently compete vigorously for radio advertisers who seek to reach Spanish-language listeners. For many local and national advertisers

buying Spanish-language radio advertising time in the Houston, Las Vegas, and San Francisco Spanish-language Overlap Markets, Clear Channel and Univision stations are each other's next best substitutes. During individualized rate negotiations, the substantial number of advertisers who desire to reach these listeners can benefit from this competition by "playing off" Clear Channel and Univision stations against each other to reach better terms.

35. Spanish-language radio station ownership in Houston, Las Vegas, and San Francisco is highly concentrated. Clear Channel and Univision's combined Spanish-language listener share exceeds 75 percent in Houston, 73 percent in Las Vegas, and 70 percent in San Francisco. Additionally, Clear Channel and Univision's combined Spanish-language advertising revenue share exceeds 79 percent in Houston, 78 percent in Las Vegas, and 63 percent in San Francisco.

36. Using the Herfindahl-Hirschman Index, concentration in these markets would increase significantly as a result of the acquisition, with post-acquisition HHIs exceeding 6,500 in all three markets, well above the 1,800 threshold at which the Department normally considers a market to be highly concentrated.

B. This Acquisition Would Substantially Lessen Competition

1. Radio Advertising in Houston and Cincinnati

37. Clear Channel is one of only a few radio companies competing with CMP in the sale of radio advertising in Houston and Cincinnati, and within those markets, the two companies are each other's next best substitutes for advertisers seeking to reach several key demographic groups. Bain and THL together possess the ability to control CMP; they hold 50 percent of the voting and equity interests and have the right to choose half of the members of its Board of Directors. CMP's Board of Directors cannot make decisions without the agreement of either Bain or THL, which also

have access to CMP's non-public, competitively sensitive information and its officers and employees. These ownership interests and associated rights give each of Bain and THL, as well as Bain and THL acting together, influence over, if not outright control of, CMP's management decisions.

38. Upon consummation of their proposed acquisition of interests in Clear Channel, defendants Bain and THL together would also control Clear Channel. Together, they would own at least 70 percent of the equity and voting interests of Clear Channel and have the right to select eight of Clear Channel's 12 directors. In addition, Bain and THL would have access to Clear Channel's non-public, competitively sensitive information and to the company's officers and employees. After the acquisition, each of Bain and THL, as well as Bain and THL acting together, would have influence over, if not outright control of, Clear Channel's management decisions.

39. Bain or THL, or Bain and THL acting together, would have the incentive and ability to use their ownership, control and influence, and access to information as to both Clear Channel and CMP to reduce competition between the companies in markets where they are significant competitors, resulting in an increase in prices for a significant number of advertisers. The Houston and Cincinnati radio markets are highly concentrated, and these advertisers will find it difficult or impossible to "buy around" Clear Channel and CMP, *i.e.*, to effectively reach their targeted audience without using Clear Channel or CMP radio stations. Thus, Bain's and THL's proposed acquisitions of ownership interests in Clear Channel, if consummated, would substantially reduce competition for radio advertising in the Houston and Cincinnati markets.

2. *Spanish-language Radio Advertising*

40. Clear Channel is one of only a few radio companies competing with Univision for Spanish-language radio advertising time in Houston, Las Vegas, and San Francisco, and within those markets, the two companies are each other's next best substitutes for advertisers targeting Spanish-language listeners. THL currently has a 20 percent equity interest and a 14 percent voting interest in Univision, as well as the right to designate three Univision board members. THL also has access to Univision's non-public, competitively sensitive information and its officers and employees.

Significant corporate decisions at Univision require the assent of three of its five owners. THL's ownership interest and associated rights give it influence over Univision's management decisions.

41. Upon consummation of the proposed acquisition of Clear Channel, defendant THL would own at least 35 percent of the equity and voting interest of Clear Channel, as well as a right to choose four of its 12 directors. In addition, after the acquisition, THL would have access to Clear Channel's non-public, competitively sensitive information and its officers and employees. THL's ownership interest and associated rights would give it influence over Clear Channel's management decisions.

42. THL would have the incentive and ability to use its ownership, control and influence, and access to information as to both Clear Channel and Univision to reduce competition between the companies in markets where they are significant competitors, resulting in an increase in prices for a significant number of advertisers. The Houston, Las Vegas, and San Francisco radio markets are highly concentrated, and these advertisers will find it difficult or impossible to "buy around" Clear Channel and Univision, *i.e.*, to effectively reach their targeted audience without using Clear Channel or Univision radio stations. Thus, THL's proposed acquisition of an ownership interest in Clear

Channel, if consummated, would substantially reduce competition in the Spanish-language Overlap Markets.

C. *Entry Conditions*

43. Entry of new radio stations into the relevant geographic markets would not be timely, likely, or sufficient to mitigate the competitive harm likely to result from this acquisition. Entry could occur by obtaining a license for new radio spectrum or by reformatting an existing station.

44. Acquisition of new radio spectrum is highly unlikely because spectrum is a scarce and expensive commodity.

45. Reformatting by existing stations in any of the relevant geographic markets would not be sufficient to mitigate the competitive harm likely to result from this acquisition. For those stations in these markets that have large shares in other coveted demographics, a format shift solely in response to small but significant increases in price by Clear Channel, CMP, or Univision is not likely because it would not be profitable. For those radio stations that may have incentives to change formats in response to small but significant increases in price by Clear Channel, CMP, and Univision, their shift would not be sufficient to mitigate the anticompetitive effects resulting from this acquisition.

VIII. Violation Alleged

46. Each and every allegation in paragraphs 1 through 45 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

47. The effect of the proposed acquisition of interests in Clear Channel by Bain and THL would be to substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

48. Unless restrained, the transaction would likely have the following effects, among others, in the provision of radio advertising and Spanish-language radio advertising in the relevant geographic markets:

- a. competition in the sale and provision of advertising on radio stations in the relevant markets would be substantially lessened or eliminated; and
- b. the prices for advertising on radio stations in the relevant markets would likely increase, and the quality of services would likely decline.

IX. Requested Relief

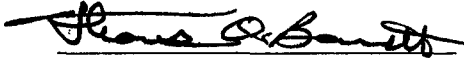
49. The plaintiff requests:

- a. That Bain's and THL's proposed acquisitions of interests in Clear Channel be adjudged to violate Section 7 of the Clayton Act;
- b. That the defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisitions or from entering into or carrying out any agreement, understanding, or plan, the effect of which is to bring radio stations in the relevant markets under common ownership or control;
- c. That the United States be awarded the costs of this action; and
- d. That the United States be granted such other and further relief as the Court may deem just and proper.

Dated: February 13, 2008.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:



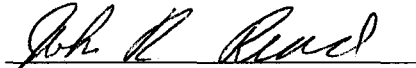
Thomas O. Barnett (D.C. Bar No. 426840)
Assistant Attorney General



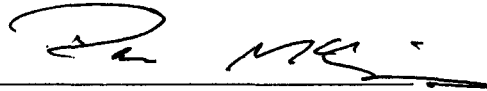
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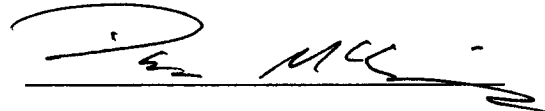
CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2008, I caused a copy of the foregoing Complaint, proposed Final Judgment, Competitive Impact Statement, Hold Separate Stipulation and Order, and Explanation of Consent Decree Procedures to be served on the defendants in this matter in the manner set forth below:

By electronic mail and hand delivery:

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APPENDIX A

DEFINITION OF HHI

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$).

The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.