UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, United States Department of Justice Antitrust Division 1401 H Street, NW Suite 4000 Washington, DC 20530	:	CASE NUMBER 1:99CV03212
Plaintiff,	:	JUDGE: Thomas F. Hogan
v.	:	DECK TYPE: Antitrust
CBS CORPORATION 51 West 52nd Street New York, New York 10019;	:	DATE STAMP: 12/06/1999
INFINITY BROADCASTING CORPORATION 40 West 57th Street New York, New York 10019;	:	
and	:	
OUTDOOR SYSTEMS, INC. 12502 North Black Canyon Highway Phoenix, Arizona 85009	:	
Defendants.	:	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to prevent the proposed acquisition of Outdoor Systems, Inc. ("OSI") by CBS

Corporation ("CBS") pursuant to and an Agreement and Plan of Merger between CBS and OSI dated May 17, 1999.

I. Nature of the Action

1. CBS and OSI sell out-of-home advertising of various types, including billboards, display faces in subway cars and terminals, and signs that appear on bus shelters and the sides of buses. They compete to sell out-of-home advertising in three major metropolitan areas: (1) the New York, New York area, which consists of the five boroughs of Brooklyn, Queens, Manhattan, the Bronx and Staten Island ("New York City Area"); (2) the New Orleans, Louisiana area, which consists of the three parishes of St. Tammany, Orleans and Jefferson ("New Orleans Metropolitan Area"); and (3) the Phoenix, Arizona area, which consists of Maricopa County ("Phoenix Metropolitan Area").

2. If CBS acquires OSI, competition in the New York City Metropolitan Area, the New Orleans Metropolitan Area and the Phoenix Metropolitan Area will be lessened substantially. The acquisition would eliminate the head-to-head competition that currently exists between CBS and OSI and would give the merged firm a dominant share in each of these three metropolitan areas ("Three Metropolitan Areas").

3. Unless the acquisition is blocked, the loss of competition in the Three Metropolitan Areas likely will result in advertisers paying higher prices and receiving a reduction in services.

II. Jurisdiction and Venue

4. This action is filed pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to obtain equitable relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. In each of the Three Metropolitan Areas, CBS and OSI regularly contract with customers located in various states for the sale of out-of-home advertising. Out-of-home advertising is a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has jurisdiction over the subject matter of this action and over the parties pursuant to Sections 12 and 15 of the Clayton Act, 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

6. The defendants transact business and are found within the District of Columbia. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III. Defendants and the Transaction

7. CBS, a major corporation engaged in numerous media businesses, including out-of-home advertising, is a Pennsylvania corporation headquartered in New York, New York. CBS conducts out-of-home advertising business through TDI Worldwide, Inc. ("TDI"), a wholly owned subsidiary of CBS-owned Infinity Broadcasting Corporation ("Infinity"). TDI sells out-of-home advertising in various markets throughout the United States, including the Three Metropolitan Areas.

8 Infinity is a Delaware corporation headquartered in New York, New York, Infinity owns and/or operates numerous radio stations in major markets in the United States and conducts the sale of out-of-home advertising through its subsidiary, TDI.

9. OSI is a Delaware corporation headquartered in Phoenix, Arizona. OSI is the largest out-of-home advertising company in North America, operating over 100,000 out-of-home advertising display faces in approximately 90 markets throughout the United States, including in each of the Three Metropolitan Areas.

10. On May 17, 1999, CBS entered into an Agreement and Plan of Merger with OSI. After a newly formed and wholly owned subsidiary of Infinity is merged into OSI, OSI shareholders will receive shares of Infinity valued at approximately $6.5 billion. In addition, Infinity will assume debt obligation of OSI valued at approximately $1.8 billion, bringing the total transaction value to $8.3 billion.

IV. Trade and Commerce

A. Relevant Product Market

11. Out-of-home advertising companies generate revenue from the sale of advertising space to local and/or national businesses that want to promote their products and services.

12. Advertisers select out-of-home advertising based on a number of factors, including the size of the target audience (individuals most likely to purchase the advertiser's products or services), the vehicular and pedestrian traffic patterns of the audience, as well as other audience characteristics. Many advertisers seek to reach a large percentage of their target audience by selecting out-of-home advertising forms, like billboards, that appear on highways, roads and streets where vehicle and pedestrian traffic is high. This way, the advertisements will be viewed frequently by the advertiser's target audience.

13. In some densely populated metropolitan areas, a significant number of advertisers also select out-of-home advertising displayed within metropolitan transit authority systems. This includes displays found on the sides of buses and within subway systems. Advertisers select advertising space within a transit system because of the large number of viewers who will routinely be exposed to the advertiser's message each day. Such viewers include commuters who use the transit system, as well as pedestrians and passengers in vehicles.

14. Out-of-home advertising has prices and characteristics that are distinct from other advertising media. It is particularly suitable for highly visual, limited-information advertising, because consumers are exposed to an out-of-home advertisement for only a brief period of time. Out-of-home advertising is typically less expensive and more cost-efficient than other media at reaching an advertiser's target audience. Many advertisers who use out-of-home advertising also advertise in other media, including radio, television, newspapers and magazines, but use out-of-home advertising when they want a large number of exposures to consumers at a low cost per exposure.

15. For many advertising customers, out-of-home advertising has particular characteristics that make it an advertising medium for which there is no close substitute. Such customers would not switch to another advertising medium if out-of-home advertising prices increased by a small but significant amount.

16. Although some local and national advertisers may switch some of their advertising to other media, rather than absorb a price increase in out-of-home advertising, the existence of such advertisers would not prevent out-of-home advertising companies in each of the Three Metropolitan Areas from profitably raising their prices a small but significant amount. At a minimum, out-of-home

advertising companies could profitably raise prices to those advertisers who view out-of-home advertising as a necessary advertising medium either as their sole method of advertising or as a necessary advertising complement to other media. During individual price negotiations between advertisers and out-of-home advertising companies, advertisers provide the out-of-home advertising companies with information about their advertising needs, including their target audience and the desired exposure. This information enables out-of-home advertising companies to price discriminate among customers. Because of this ability to price discriminate, out-of-home advertising companies may charge higher prices to advertisers that view out-of-home advertising as particularly effective for their needs, while maintaining lower prices for other advertisers.

B. Relevant Geographic Market

17. Out-of-home advertising is typically offered on a localized, market-by-market basis rather than nationally or regionally. Much of the inventory (e.g., transit advertising contracts or leases for billboard space) is obtained on a local basis through contracts between out-of-home advertising firms and municipal authorities or property owners. Firms that sell out-of-home advertising set prices based on local market conditions and employ local sales forces to sell out-of-home advertising.

18. Similarly, many advertisers need to reach consumers in a particular city or metropolitan area. For those advertisers, advertising that targets consumers in a different area (or outside the city or metropolitan area) is not an adequate substitute. Such advertisers may have their businesses located in that city or metropolitan area and therefore need to reach that area's consumers. Moreover, even advertisers who want to reach all consumers nationwide or in a particular region still may need to advertise in each city or metropolitan area, and omitting advertising in one area in favor of advertising in

another is not a viable option. Advertising outside the city or metropolitan area is also not an adequate substitute because most of the target audience may not even see the advertising. For many advertisers who target consumers in each of the Three Metropolitan Areas, there are no reasonable substitutes for out-of-home advertising located within each of the Three Metropolitan Areas. A small but significant increase in the price of out-of-home advertising in each of the Three Metropolitan Areas would not cause these advertisers to turn to out-of-home advertising located outside each area.

19. In each of the Three Metropolitan Areas, out-of-home advertising constitutes a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act. The New York City Area, the New Orleans Metropolitan Area and the Phoenix Metropolitan Area are each relevant geographic markets and a sections of the country within the meaning of Section 7 of the Clayton Act.

C. Market Concentration

20. In each of the Three Metropolitan Areas, the market for out-of-home advertising is highly concentrated. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, a combination of CBS and OSI would increase concentration substantially in each of the Three Metropolitan Areas.

21. In the New York City Area, CBS and OSI are the number one and number two providers of out-of-home advertising, respectively. After the merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would exceed 60 percent. The approximate post-merger HHI would be 3960, representing an increase of 1850 points.

22. In the New Orleans Metropolitan Area, OSI and CBS are two of four major providers of out-of-home advertising. Post-merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would increase to over 90 percent and the approximate post-merger HHI would be 3944, representing an increase of 672 points.

23. In the Phoenix Metropolitan Area, OSI and CBS are two of four major providers of out-of-home advertising. Post-merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would increase to over 75 percent. The approximate post-merger HHI would be 5904, representing an increase of 568 points.

D. Harm to Competition as a Result of the Merger and Entry

24. In each of the Three Metropolitan Areas, CBS and OSI compete head-to-head, and, for many local and/or national advertisers buying certain types of out-of-home advertising, they are each other's closest competitor. During individual price negotiations, these advertisers are able to ensure competitive prices by obtaining rates from both OSI and CBS and playing the rates of one off the rates of the other. CBS's acquisition of OSI will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using CBS's out-of-home advertising displays. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give CBS the ability to raise prices and reduce the quality of its service to advertisers in each of the Three Metropolitan Areas.

25. New entry into the out-of-home advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

V. Violation Alleged

26. In each of the Three Metropolitan Areas, the effect of the proposed acquisition of OSI by CBS may be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) actual and potential competition between CBS and OSI in the business of out-of-home advertising will be eliminated;

(b) competition generally in the business of out-of-home advertising would be lessened substantially; and

(c) the prices for out-of-home advertising would likely increase, and services would likely decline.

VI. **Requested Relief**

The plaintiff requests: (a) adjudication that CBS's proposed acquisition of OSI would be a violation of Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as the Court deems proper.

Dated: December 6, 1999

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/
Joel I. Klein
Assistant Attorney General

/s/
Willie Hudgins (DC Bar # 37127)
Assistant Chief, Litigation II Section

/s/
Donna E. Patterson
Deputy Assistant Attorney General

/s/
Anne M. Purcell
Assistant Chief, Litigation II Section

/s/
Constance K. Robinson
Director of Merger Enforcement and Operations

/s/
Renée Eubanks
Rex Y. Fujichaku
David R. Bickel
Karl D. Knutsen
Tara Shinnick
Attorneys
U.S. Department of Justice
Antitrust Division
1401 H Street, NW; Suite 4000
Washington, DC 20530

(202) 307-0001

APPENDIX A
HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It 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 thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. 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 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

Certificate of Service

I, Renée Eubanks, hereby certify that, on December _6_, 1999, I caused the foregoing document to be served on defendants CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems Inc., having a copy mailed, first-class, postage prepaid, to:

Helene Jaffe
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Counsel for CBS Corporation and
Infinity Broadcasting Corporation

Mitchell Raup
Mayer, Brown & Platt
1909 K Street, N.W.
Washington, D.C. 20006
Counsel for Outdoor Systems, Inc.

________________/s/_________________
Renée Eubanks