

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

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 4000
Washington, DC 20530

Plaintiff,

Civil No. CIV-99-00652
Judge Robertson
Filed: 3/16/99

v.

CENTRAL PARKING CORPORATION,
2401 21st Avenue South
Nashville, Tennessee 37212,

and

ALLRIGHT HOLDINGS, INC.,
1313 Main Street
Houston, Texas 77002

Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to prevent the proposed merger between Central Parking Corporation (Central) and Allright Holdings, Inc. (Allright).

I. NATURE OF THE ACTION

1. The proposed merger would combine the two largest private parking management companies in the United States, in terms of parking facilities, spaces, and parking revenues.

Central and Allright are two of only four parking management companies with a nationwide presence. If the proposed merger is permitted, the merged firm would be much larger than any rival. In many of the markets where Central and Allright now compete, market concentration would increase substantially, and the merged entity would have a dominant market share.

2.

3. Central and Allright are direct and substantial head-to-head competitors in providing off-street parking services to motorists (consumers) visiting the central business districts (CBDs) of various cities in the United States. For example, in one such city, Nashville, Tennessee, an Allright manager wrote that:

competition between Allright and Central is fierce and all attempts by other majors to enter this market have failed. The market is split between Allright and Central with both having ownership in many high profile properties.

3. Head-to-head competition between Central and Allright has benefited consumers through lower prices and better services. The proposed merger threatens to end the “fierce competition” between Central and Allright, in violation of Section 7 of the Clayton Act.

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. Both Central and Allright sell off-street parking services to consumers within this District, including to consumers who come from areas outside of this District. Defendants purchase, for use in this District, substantial quantities of equipment, services, and supplies from sources located outside of this District. In many states where defendants operate parking facilities, the defendants make purchases of equipment, services, and supplies across state lines. Hence, the provision of parking services by Central and Allright is an activity that substantially affects and is in the flow of interstate trade and commerce. Accordingly, this Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

6. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b),(c).

III. DEFENDANTS

7. Central is a Tennessee corporation headquartered in Nashville, Tennessee. Central provides off-street parking services to consumers in the United States and other countries. It is the largest company offering such services in the United States, in terms of the number of parking facilities, the number of parking spaces that it controls, and the revenues generated from parking services. Central operates more than 2,400 parking facilities containing more than a million spaces. Its portfolio of parking facilities includes owned, leased and managed properties. In fiscal year 1997, Central had revenues of \$222,976,000.

8. Allright is a privately held Delaware corporation headquartered in Houston, Texas, and also provides off-street parking services to consumers in the United States. Allright is currently 44.5 percent owned by Apollo Real Estate Investment Fund II, L.P., 44.5 percent owned by AEW Partners L.P., 9.1 percent owned by management, and 1.9 percent owned by certain financial advisors to Apollo and AEW and one member of the previous Allright management team. Allright is the second largest parking company in the United States in terms of number of parking facilities, number of parking spaces, and revenues generated from parking services. Allright operates more than 2,300 parking facilities containing nearly 600,000 spaces. Like Central, its portfolio of parking facilities includes owned, leased and managed properties. In fiscal year 1997, Allright had annual revenues of \$178,637,000.

IV. THE PROPOSED MERGER

9. On or about September 21, 1998, Central and Allright entered into a merger agreement whereby Allright will become a wholly owned subsidiary of Central which will continue as the surviving entity in name and structure. Current Central shareholders will own approximately 80 percent of Central's common stock, and current Allright shareholders will own approximately 20 percent of Central's common stock. The value of the proposed merger at the time it was announced was approximately \$585 million.

V. TRADE AND COMMERCE

A. The Relevant Product Market

10. The appropriate relevant product market in which to assess the likely anticompetitive effects of the proposed merger is the provision of off-street parking services.

11. Consumers drive their vehicles to the CBDs of cities for work, business, shopping or entertainment. Off-street parking facilities are the primary type of location at which they may leave their vehicles while they are in the city. These parking facilities generally are open lots, free-standing garages, or parking garages located within commercial or residential buildings.

12. Each defendant offers consumers off-street parking services at facilities that it owns, leases, or manages. When a defendant owns or leases a parking facility, it is the proprietor of the business and sets the conditions of operation, including prices. When a defendant manages a parking facility for an entity that owns the facility, the defendant recommends conditions of business operation, including prices. Often, in such managed parking facilities, the incentives of a defendant are the same or similar to those of the owner to maximize profits as to nontenant or transient consumers.

13. Off-street parking services are commonly offered to consumers on the basis of monthly, daily, hourly, and less-than-hourly prices. In addition, such services are frequently offered to consumers at special prices for lower demand times, including “early bird,” evening, and overnight prices.

14. On-street parking is generally not a practical substitute for off-street parking services. Off-street parking facilities provide many advantages over parking on the street. For example, off-street parking facilities allow consumers to select a level of service (*e.g.*, self-parking, valet), a feature not available with on-street parking. Off-street parking facilities often provide consumers relative certainty about availability of suitable parking and the location and time that it will be available. Off-street parking also offers consumers greater security for their vehicles. In addition, consumers often can leave vehicles in an off-street parking facility as long as desired without the need to move them or “feed the meter,” thereby eliminating the risk that

the vehicles will receive parking tickets. Furthermore, in the case of a garage, the vehicles are sheltered from the elements, a feature not available with on-street parking.

15. In most CBDs, on-street parking is available only in small quantities and the prospect that motorists would switch to on-street parking is unlikely to affect significantly pricing decisions of managers of off-street parking facilities.

16. The possibility of traveling to a CBD by public transportation is not likely to be a significant constraint on pricing decisions of managers of off-street parking facilities.

Consumers who decide to drive to the CBD rather than take public transportation do so for a variety of reasons and are unlikely to switch in significant numbers to public transportation as a result of a small change in the price of off-street parking.

17. The provision of off-street parking services is a relevant product market (*i.e.*, a “line of commerce”) within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Markets

18. The appropriate relevant geographic markets within which to assess the likely anticompetitive effects of the proposed merger are no larger than CBDs of cities or smaller areas contained therein.

19. Competition among off-street parking facilities occurs in CBDs and smaller areas within the CBDs of cities across the United States. Defendants' managers make pricing decisions for each facility based on market conditions within a few blocks of that facility.

20. For convenience, motorists park near their destination, typically within a few blocks. Consumers faced with a small but significant increase in parking prices near their destinations would not turn to more distant parking facilities in sufficient numbers to render the price increase unprofitable.

21. The CBDs or smaller areas contained therein, of the following cities: (1) Cincinnati and Columbus, Ohio; (2) Nashville, Knoxville, and Memphis, Tennessee; (3) Dallas, Houston, El Paso, and San Antonio, Texas; (4) Baltimore, Maryland; (5) Denver, Colorado; (6) Jacksonville, Tampa, and Miami, Florida; (7) San Francisco, California; (8) Kansas City, Missouri; (9) New York, New York; and (10) Philadelphia, Pennsylvania, constitute relevant geographic markets (*i.e.*, "sections of the country") within the meaning of Section 7 of the Clayton Act.

VI. UNLAWFUL COMPETITIVE EFFECTS

22. Central and Allright are direct and substantial competitors in offering off-street parking services to consumers. Central and Allright compete on the prices charged to consumers and on the terms and conditions and other services offered to consumers, including hours of

operation, the mixture of parking options offered (*e.g.*, monthly contracts, “early bird” or evening specials), cleanliness of facilities, and the skill, efficiency and courtesy of staff.

23. Central and Allright establish, either unilaterally or in cooperation with the owners of the parking facilities, parking prices and terms and conditions of services in order to attract consumers to their facilities and to maximize the profitability of their various parking facilities. Generally, prices and services are established on a location-by-location basis. In determining prices and services, the defendants take into consideration a variety of factors, including the prices charged by competing firms in the geographic market in which the facility operates and other local market conditions, including the demand for off-street parking and the availability of other off-street parking locations.

24. In the relevant geographic markets identified in Paragraphs 18-21 of this Complaint, the proposed merger threatens substantial and serious harm to consumers. The proposed merger would substantially increase Central’s market shares in the relevant markets, and it would place in Central’s hands substantial control over prices and services available to consumers.

VII. ENTRY CONDITIONS

25. Creation of new parking spaces in CBDs is largely a by-product of other decisions, *e.g.* to build or tear down a building, that are not directly related to the demand for, or

changes in the price of, parking services. The creation of a significant number of new parking spaces is unlikely to be timely, likely, and sufficient to prevent anticompetitive effects from the merger in each of the affected markets.

VIII. VIOLATION ALLEGED

26. The proposed merger between Central and Allright is likely substantially to lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

27. The effect of the proposed merger, if consummated, may be the substantial lessening of competition in the relevant markets by, among other things:

- a. eliminating Allright as an effective independent competitor of Central in the sale of off-street parking services;
- b. eliminating or reducing substantial actual and potential competition between Central and Allright for the sale of off-street parking services; and
- c. providing Central with the ability to exercise market power by raising prices or reducing the quality of services offered for off-street parking services.

IX. REQUESTED RELIEF

28. The plaintiff respectfully requests: (a) an adjudication that the merger of Central and Allright would violate Section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the proposed merger of Central and Allright as expressed in their merger agreement dated on or about September 21, 1998 or any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Central and Allright; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated: March __, 1999

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