UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. GANNETT CO., INC., BELL CORP., and SANDER MEDIA LLC, Defendants.	)	Civil Action No. 13-CV-1984 (RBW)

ORDER

The United States, the plaintiff in this civil case, filed its complaint on December 16, 2013, contesting as anticompetitive the proposed acquisition by defendant Gannett Co, Inc. ("Gannett") of defendant Belo Corp. ("Belo"), as well as "the simultaneous implementation of related agreements between Gannett and defendant Sander Holdings Col, a wholly owned subsidiary of Sander Media LLC ('Sander')." Complaint ("Compl.") ¶ 1. Currently before the Court is Plaintiff United States of America's Renewed Motion and Memorandum for Entry of the Proposed Final Judgment ("Renewed Mot."), pursuant to the Antitrust Procedures and Penalties Act (the "Tunney Act"), 15 U.S.C. § 16 (2012).

The United States asserted in its complaint that the consummation of the proposed acquisition and implementation of the related agreements (collectively, the "Transaction") would constitute a violation of Section Seven of the Clayton Act, 15 U.S.C. § 18 (2012), because "the Transaction's likely effect would be to increase broadcast television spot advertising prices in the

St. Louis[, Missouri] Designated Market Area."[1] Renewed Mot. at 2. The United States now requests that the Court enter the proposed Final Judgment, "which is designed to eliminate the anticompetitive effects of the Transaction." Id. Specifically, the proposed Final Judgment requires the defendants to divest certain Divesture Assets, as defined in the Final Judgment. Proposed Final Judgment ("Final J.") at 3, 5-10. The defendants have agreed to entry of the proposed Final Judgment without further notice to any party or other proceedings. Renewed Mot., Certificate of Compliance ("Compliance I") ¶ 14. After carefully considering all of the relevant submissions by the parties,[2] the Court concludes for the following reasons that the plaintiff's motion should be granted and that Final Judgment should be entered.

In civil antitrust cases, the Tunney Act permits the United States to propose and courts to enter a final judgment resolving and preventing anticompetitive behavior. 15 U.S.C. § 16. Before a proposed final judgment may be entered, the United States must first satisfy the Act's threshold notice requirements: the proposed final judgment must be published in the Federal Register; a Competitive Impact Statement detailing the alleged anticompetitive behavior and the government's proposed remedy must also be published in the Federal Register; summaries of both of these documents must be published for seven days within a two week period in a

[1] The Complaint states that "the St. Louis Designated Market Area . . . includes parts of Missouri and Illinois." Compl. at 2. The proposed Final Judgment clarifies that the "Designated Market Area [is] defined by A.C. Nielsen Company based upon viewing patterns and use by the Investing In Television BIA Market Report 2013 (1st Edition)" and that such areas "are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition." Proposed Final Judgment ("Final J.") at 3.

[2] In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the United States' Explanation of Consent Decree Procedures ("Decree"); (2) the parties' Hold Separate Stipulation and Order, adopted as an order of this Court on December 20, 2013 ("Dec. 20, 2013 Order"); (3) the Competitive Impact Statement ("Statement"); (4) Plaintiff United States of America's Motion and Memorandum for Entry of the Proposed Final Judgment ("Mot."); and (5) the Joint Notice Regarding Additional Newspaper Notice ("Notice").

newspaper in the jurisdiction in which the case is filed;[3] and the United States must accept and respond to public comments during a sixty day window following publication. Id. § 16(b)-(d). After the Act's threshold notice requirements are satisfied, the Court must then determine whether entering the final judgment would be in the public interest. Id. § 16(e). A court must consider two factors when making this determination:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, 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.

Id. § 16(e)(1). A court's review of a proposed final judgment is highly deferential; thus, approval should be withheld "'only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes a mockery of judicial power.'" Massachusetts v. Microsoft Corp., 373 F.3d 1199, 1236 (D.C. Cir. 2004) (quoting Mass. Sch. of Law at Andover, Inc. v. United States, 118 F.3d 776, 783 (D.C. Cir. 1997)) (internal quotations omitted). Moreover, the Tunney Act does not require a hearing as to whether a final judgment is in the public interest. 15 U.S.C. § 16(e)(2). However, the proposed final judgment must remedy only the anticompetitive behavior alleged in the complaint and it must not go beyond that. United States v. Microsoft Corp., 56 F.3d 1448,

[3] The statute requires specifically that notice be published "in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct." 15 U.S.C. § 16(c). Here, the plaintiff initially requested by motion the Court on March 11, 2014, to enter final judgment in this matter. See Mot. at 1, 5. The Court denied that motion without prejudice and ordered the plaintiff to publish the proposed Final Judgment and the Competitive Impact Statement for "additional public notice" in the Eastern District of Missouri. April 24, 2014 Order at 3, 4 ("Order").

1459 (D.C. Cir. 1995). Finally, "the court's function is not to determine whether the resulting array of rights and liabilities 'is the one that will best serve society,' but only to confirm that the resulting 'settlement is within the reaches of the public interest.'" United States v. W. Elec. Co., 900 F.2d 283, 309 (D.C. Cir. 1990) (quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981) (emphasis in original) (internal quotations omitted)).

Upon its review of the record in this case, the Court finds that the United States has satisfied each of the Tunney Act's threshold requirements. Specifically, on December 16, 2013, the United States filed both the proposed Final Judgment and the Competitive Impact Statement with the Court. Mot., Compliance I ¶ 1. On December 30, 2013, the United States published both documents in the Federal Register, United States v. Gannett Co., Inc., Belo Corp., and Sander Media LLC, 78 Fed. Reg. 79,485, and, beginning on December 23, 2013, the United States published the proposed Final Judgment in The Washington Post for seven consecutive days. Mot., Compliance ¶ 3. Sixty days were then allowed for public comment on the proposed Final Judgment, and no comments were received by the United States during that time. Id. ¶¶ 4-5. Likewise, during the period of May 3-14, 2014, these documents were published in the St. Louis Post-Dispatch for seven consecutive days. Renewed Mot., Certificate of Compliance ("Compliance II") ¶¶ 7-8. And sixty days thereafter were allowed for public comment on the proposed Final Judgment, but no comments were received by the United States. Id. ¶¶ 9-10.

Additionally, the Court concludes that the proposed Final Judgment is in the public interest. The terms of the proposed Final Judgment unambiguously terminates the anticompetitive behavior that gave rise to the complaint filed in this case by the United States. The procedures governing the divestment of the Divesture Assets are clearly delineated in the Final Judgment. Final J. at 5-7. The Court finds that the appointment of a Divesture Trustee, if

needed, id. at 8-10, and the periodic compliance inspections that will be conducted by the United States Department of Justice or its agents, id. at 13-14, are effective enforcement mechanisms. Moreover, the proposed Final Judgment provides that the Court will retain jurisdiction to modify, enforce, or punish violations of the Final Judgment, to ensure compliance. Id. at 15. The Court perceives no positive third-party injuries that are likely to result from entering the proposed Final Judgment. Finally, the proposed Final Judgment is a reasonable response to the anticompetitive effects of the Transaction and is appropriate in scope, and thus approval of the Judgment would in no way make a mockery of judicial authority. The Court, therefore, finds that entry of the proposed Final Judgment is appropriate.

Accordingly, it is hereby

ORDERED that the plaintiff's motion to enter final judgment is **GRANTED**. It is further

ORDERED that the proposed Final Judgment is **ENTERED**. It is further

ORDERED that this case be **CLOSED**, subject to the United States moving to reopen the case in the event of the defendants' noncompliance with the terms of what is now a Final Judgment.

SO ORDERED this 18th day of November, 2014.

REGGIE B. WALTON
United States District Judge