

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

UNITED STATES OF AMERICA)
United States Department of Justice)
Antitrust Division)
450 Fifth Street, N.W., Suite 7000)
Washington, D.C. 20530,)
)
Plaintiff)
)
v.)
)
STANDARD PARKING CORPORATION)
900 N. Michigan Avenue, Suite 1600)
Chicago, Illinois 60611-1542)
)
KCPC HOLDINGS, INC.)
c/o Kohlberg & Company)
111 Radio Circle)
Mt. Kisco, New York 10549)
)
and)
)
CENTRAL PARKING CORPORATION)
2401 21 st Avenue South, Suite 200)
Nashville, Tennessee 37212,)
)
Defendants)
_____)

COMPLAINT

The United States of America (“United States”), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Standard Parking Corporation (“Standard”), and KCPC Holdings, Inc., including its wholly owned subsidiary, Central Parking Corporation (together, “Central”), to enjoin Standard’s proposed acquisition of Central. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an Agreement and Plan of Merger dated February 28, 2012, Standard proposes to acquire all the shares of Central from affiliates of Kohlberg & Co. LLC, Lubert-Adler Partners LP and Versa Capital Management LLC, who will in turn acquire minority interests in Standard with board representation. The transaction is valued at approximately \$345-348 million in total, including cash, about 6.1 million shares of Standard's common stock, and assumption of Central's debt.

2. The merger will combine the two largest nationwide operators of off-street parking facilities in the United States, in terms of parking facilities, spaces, and parking revenues, effectively doubling the size of Standard. Together, Standard and Central will operate about 4,400 parking facilities, with over 2.2 million parking spaces, and more than \$1.5 billion in combined total revenues. In many of the markets where Standard and Central now compete, market concentration would increase substantially, and the merged entity would have a dominant share.

3. Standard and Central are direct and substantial head-to-head competitors in providing off-street parking services to motorists, the consumers of such parking services, visiting the central business districts ("CBDs") of various cities in the United States. In many of the cities where both Standard and Central operate, one of the two firms is the largest or among the largest operators of off-street parking services, and the other firm operates nearby parking facilities that constitute attractive competitive alternatives for consumers.

4. Head-to-head competition between Standard and Central has benefitted

consumers through lower prices and better services. The proposed merger threatens to end the substantial competition between Standard and Central in those areas where they operate competing parking facilities that are attractive alternatives for consumers, in violation of Section 7 of the Clayton Act.

II. THE DEFENDANTS

5. Standard Parking Corporation, which is publicly held, is incorporated in Delaware and headquartered in Chicago, Illinois. It is one of the two largest operators of off-street parking facilities in the United States, with parking operations in 41 states and the District of Columbia. Standard operates approximately 2,200 parking facilities containing over 1.2 million parking spaces in hundreds of cities. More than 90% of its facilities and spaces are located in the United States, with some in Canada. Its portfolio includes leased and managed parking facilities, with about 90% of its facilities under management contracts. Standard's total reported revenues for 2011 were over \$729 million, including more than \$321 million from leases and management contracts, and more than \$408 million from reimbursement of management contract expenses. Standard has grown in large part through several earlier mergers with other parking management companies, though none were as large as Central.

6. Central Parking Corporation, which is privately held, is incorporated in Tennessee and headquartered in Nashville, Tennessee. Central Parking Corporation is a wholly owned subsidiary of KCPC Holdings, Inc., which is incorporated in Delaware and located at the address of its largest owner, Kohlberg & Company, in Mt. Kisco, New York. Central is the other of the two largest operators of off-street parking facilities in

the United States, with parking operations in 38 states and the District of Columbia and Puerto Rico. Central operates more than 2,200 parking facilities and approximately 1 million parking spaces. Its portfolio includes owned, leased and managed parking facilities, with most of its facilities under management contracts though many facilities are also leased. Central's total revenues for 2011 were in excess of \$800 million.

III. JURISDICTION AND VENUE

7. The 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, 15 U.S.C. § 18.

8. In states where Defendants operate parking facilities, they serve motorists that cross state lines; provide centralized management services across state lines from their respective headquarters; and purchase substantial quantities of equipment, services and supplies in the flow of interstate commerce. The operation of off-street parking services by Standard and Central is thus 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 pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

9. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

10. The relevant product market in which to assess the likely competitive 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 usually where they park their vehicles while they are in the city. These parking facilities include open lots, free-standing garages, or parking garages located within commercial or residential buildings.

12. Standard and Central, as operators of parking facilities, each offer consumers off-street parking services at facilities that the operator owns, leases, or manages. When an operator owns a parking facility, it is the proprietor of the business and sets the conditions of operation, including prices. When an operator leases a parking facility from the property owner, it pays the owner a set lease amount or sharing revenues with the owner, has substantial or complete control over pricing and other conditions of operation, and keeps all or a substantial share of the revenues. When an operator manages a parking facility for the owner of that facility, the operator commonly conducts competitive rate analyses of the parking prices in the area near the facility and recommends prices and other operating practices to the owner. In addition, the operator of a managed parking facility is not only compensated with a set management fee and reimbursement of a large part of its expenses in operating the facility, but also often receives a share of revenues or profits, giving the manager an incentive to operate the facility so as to maximize revenues and profits. Often, in such managed parking facilities, the incentives of the operator are the same or similar to those of the owner to

maximize profits, especially as to non-tenant monthly customers, or transient (daily, hourly and event parking) customers.

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 certain events in the area, or 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 services provide many advantages over on-street parking. Off-street parking services can allow consumers to select a level of service (such as using a valet parking service instead of just self-parking), a feature not available with on-street parking. Off-street parking facilities often provide consumers with relative certainty about availability of suitable parking and the location and time that it will be available, especially for consumers who purchase monthly contracts. Off-street parking also offers consumers greater security for their vehicles, and in the case of a garage, the vehicles are sheltered from the elements, a feature not available with on-street parking. In addition, consumers usually 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. On-street parking in CBDs is frequently only short-term parking, limited to a few hours and unavailable in certain locations at particular times of day, such as “rush hour,” when more traffic lanes in CBDs need to be open. Finally, in most CBDs on-street parking is available only in small quantities compared with off-street parking.

15. For all these reasons, 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. Consumers who decide to drive to the CBD rather than take public transportation do so for a variety of reasons, and public transportation is not a practical substitute for off-street parking. Thus, 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, even where adequate public transportation is available in a city.

17. 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 and recommendations to owners for each facility based on market conditions within a few blocks of that facility.

18. For convenience, motorists park near their destination, typically within a few blocks, since they need to walk the remainder of the way to their destination.

19. Consumers faced with a small but significant and nontransitory increase in off-street parking prices near their destinations would not turn to more distant parking facilities, on-street parking, or public transportation in sufficient numbers to render the price increase unprofitable. Therefore, the provision of off-street parking services is a relevant product market, and a line of commerce within the meaning of Section 7 of the Clayton Act. In addition, the relevant geographic markets within which to assess the likely anticompetitive effects of the proposed merger are no larger than CBDs of cities, and commonly consist of considerably smaller areas of CBDs that encompass those off-

street parking facilities within a few blocks of a destination for consumers. These areas are “sections of the country” within the meaning of Section 7 of the Clayton Act.

20. The relevant geographic markets for off-street parking services, where Standard and Central both operate parking facilities close enough to be attractive competitive alternatives to customers, are contained within areas of the CBDs in the following 29 cities or parts of cities in the United States: (1) Atlanta, GA; (2) Baltimore, MD; (3) Bellevue, WA; (4) Boston, MA; (5) New York City (Bronx), NY; (6) Charlotte, NC; (7) Chicago, IL; (8) Cleveland, OH; (9) Columbus, OH; (10) Dallas, TX; (11) Denver, CO; (12) Fort Myers, FL; (13) Fort Worth, TX; (14) Hoboken, NJ; (15) Houston, TX; (16) Kansas City, MO; (17) Los Angeles, CA; (18) Miami, FL; (19) Milwaukee, WI; (20) Minneapolis, MN; (21) Nashville, TN; (22) New Orleans, LA; (23) Newark, NJ; (24) Philadelphia, PA; (25) Phoenix, AZ; (26) New York City (Rego Park), NY; (27) Richmond, VA; (28) Sacramento, CA; and (29) Tampa, FL.

V. UNLAWFUL COMPETITIVE EFFECTS

21. Standard and Central are direct and substantial competitors in offering off-street parking services to consumers. Standard and Central 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 and security of facilities, and the skill, efficiency and courtesy of staff.

22. Standard and Central 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 the facilities they operate and to maximize the profitability of their various parking facilities. Generally, prices and services are established on a location-by-location basis. In recommending and determining prices and services, Standard and Central take into consideration a variety of factors, including the prices charged by nearby competing firms and other local market conditions, including the demand for off-street parking and the availability of other off-street parking locations.

23. In the relevant geographic markets for off-street parking services, the proposed merger threatens substantial and serious harm to consumers. On its own or in cooperation with the owners of the parking facilities Standard operates, Standard could profitably unilaterally raise prices to consumers, or reduce the quantity or quality of services offered.

24. In some of the relevant geographic markets, there are no other competing parking facilities that would be attractive competitive alternatives to consumers using the facilities operated by either Central or Standard, so that the merger would give rise to a monopoly. In other relevant geographic markets, there are other competitors present, but the number of the other facilities and their capacities are insufficient to preclude the exercise of market power by a merged Standard and Central. In all of the geographic markets identified, the merger of Standard and Central would result in at least a moderately concentrated market and in the great majority of cases a highly concentrated market, as measured by the Herfindahl-Hirschman Index (“HHI”), which is defined and explained in Appendix A to this Complaint, leaving one firm operating at least 35%, and often much more than that, of the total parking capacity. In all of the relevant geographic markets, the merger of Standard and Central would also result in a significant increase in

concentration in the market following the merger, reflected by an increase in the HHI of at least 200 points, and, in the great majority of cases, by several hundred or even more than 1000 points.

VI. DIFFICULTY OF ENTRY

25. Creation of new parking facilities and spaces in CBDs is largely a by-product of other decisions, such as whether to build or tear down a building, which 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 in a CBD would not be timely, likely, or sufficient to prevent anticompetitive effects from the merger of Standard and Central in each of the affected markets. Other operators of parking facilities can enter only to the extent that capacity is available, and in the parking industry leases and management contracts typically run for periods of several years and are usually awarded to the incumbent operator by the owners when they come up for renewal. There can be no expectation that existing leases or management contracts currently held by Standard and Central would be transferred to new operators in a manner that would be timely, likely or sufficient to prevent anticompetitive effects from the merger in the affected markets.

VII. VIOLATIONS ALLEGED

26. The proposed merger between Standard and Central 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 product and geographic markets by, among other things:

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

VIII. REQUESTED RELIEF

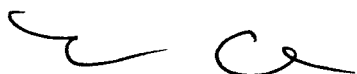
28. The United States respectfully requests that this Court: (a) adjudge and decree that the merger of Standard and Central would be unlawful and violate Section 7 of the Clayton Act; (b) preliminarily and permanently enjoin and restrain Defendants and all other persons acting on their behalf from consummating the proposed merger of Standard and Central as expressed in their merger agreement dated on or about February 28, 2012, or from entering into or carrying out any other contract, agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Standard and Central; (c) award the United States its costs for this action; and (d) award the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

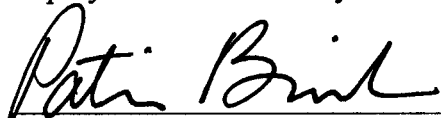
FOR PLAINTIFF UNITED STATES OF AMERICA:



Joseph F. Wayland
Acting Assistant Attorney General



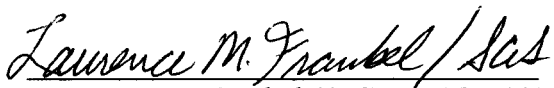
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APPENDIX A

Herfindahl-Hirschman Index

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 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 points 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 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* § 5.3 (issued by the U.S. Department of Justice and the Federal Trade Commission on Aug. 19, 2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed to be likely to enhance market power. *Id.* Mergers resulting in highly concentrated markets that involve an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. *Id.*