

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division

UNITED STATES OF AMERICA,)	
United States Department of Justice)	
Antitrust Division)	
325 7th Street, N.W., Suite 300)	
Washington, D.C. 20530)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 1:03CV0164
v.)	
)	Filed: 01/27/03
VILLAGE VOICE MEDIA, LLC,)	
36 Cooper Square)	
New York, New York 10003)	
)	
and)	
)	
NT MEDIA, LLC,)	
1201 East Jefferson Street)	
Phoenix, Arizona 85034)	
)	
<i>Defendants.</i>)	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to terminate the Defendants' illegal agreement to allocate the markets for advertisers in, and readers of, alternative newsweeklies in metropolitan Cleveland, Ohio and Los Angeles, California, in violation of 15 U.S.C. § 1. Faced with the prospect of a protracted competitive struggle in these two geographic markets, the Defendants chose instead to corrupt the competitive process: each agreed to withdraw from a market, guaranteeing the other a monopoly, and in the process depriving consumers in both cities of the continued benefits of the Defendants' competition.

I. NATURE OF THE ACTION

1. Defendants NT Media, LLC, (“New Times”) and Village Voice Media, LLC, (“Village Voice Media”) are the nation’s two largest publishers of alternative newsweeklies. Alternative newsweeklies are published and distributed weekly for free through street boxes and other displays located in various urban business establishments, which typically focus exclusively on local events and news. In the past fifteen years, alternative newsweeklies have grown dramatically, largely because advertisers have recognized their unique ability to reach a young, urban audience in a cost-effective manner.

2. Before the conduct and agreement giving rise to this Complaint, the only two geographic markets in which the Defendants competed head-to-head in publishing alternative newsweeklies were Cleveland, Ohio and Los Angeles, California. In Cleveland, New Times’s *Cleveland Scene* competed vigorously against the evenly-matched Village Voice Media’s *Cleveland Free Times*. In Los Angeles, *New Times Los Angeles* competed against the dominant newsweekly, Village Voice Media’s *LA Weekly*. In both markets, there were no other significant competitors.

3. The Defendants’ intense competition in these two markets yielded significant consumer benefits. In particular, the advertising competition in both cities brought advertisers lower advertising rates, more promotional opportunities, and better service. The editorial competition between the Defendants’ rival newsweeklies brought readers improved and varied coverage of important local events affecting social, political, and cultural issues.

4. In markets where they faced no direct alternative newsweekly competitor, which the Defendants defined as “Non-Competitive Market Properties,” both Defendants had double-

digit annual profit margins. However, in Cleveland and Los Angeles, which the Defendants termed “Competitive Market Properties,” their profit margins were pinched. Neither competitor appeared willing to retreat, leaving the prospects for a prolonged competitive price war all but certain.

5. New Times approached Village Voice Media in 2001 to discuss the possibility of a corporate merger as a way of “gaining more flexibility on raising rates.” These merger discussions broke down when neither side could agree who would control the combined entity. Both parties continued to compete vigorously in Los Angeles and Cleveland, each seeking to garner a larger share of advertising and readership at the other’s expense.

6. During the spring of 2002, New Times began discussing with Village Voice Media the possibility of one Defendant purchasing the other’s Cleveland newsweekly. Much like the earlier merger discussions, these negotiations quickly stalled when neither Defendant was willing to abandon its Cleveland publication, each arguing that its newsweekly was the dominant publication and that the other should relent and leave the Cleveland market.

7. As early as July 2002, New Times proposed the market-allocation concept that the Defendants ultimately adopted. Under the proposal, New Times would agree to shut down its newsweekly in Los Angeles if Village Voice Media would shut down its newsweekly in Cleveland. New Times demanded, and Village Voice Media agreed to pay New Times, a net amount of \$9 million in cash at closing (\$11 million to New Times less \$2 million paid to Village Voice Media). The result of the agreement would be that each Defendant would control the sole remaining alternative newsweekly in one of the two formerly contested markets.

8. Village Voice Media's chief financial officer succinctly summarized the deal's effect:

These are the only two markets where Village Voice Media and New Times directly compete and this transaction effectively ends the war

Moreover, both parties understood that this arrangement was permanent; as one of Village Voice Media's Board Directors explained to his CEO, "what we are paying for is for them [New Times] to go away forever."

9. The Defendants ultimately memorialized their *per se* illegal market and customer allocation agreement on October 1, 2002, by executing two interlocking written contracts, hereinafter referred to as the "written agreements." These agreements did not contemplate any meaningful transfer or integration of assets, but rather were intended to effectuate Defendants' market swap.

10. Pursuant to their illegal scheme, the final issue of the *Cleveland Free Times* went to press on October 2, 2002, and Village Voice Media advised its Cleveland-based employees that the newsweekly would be closed and their employment immediately terminated. Likewise, on October 3, 2002, the *New Times LA* closed its operations after publishing its final issue.

11. The Defendants immediately capitalized on their market swap by exploiting their new monopolies. In Los Angeles, Village Voice Media began implementing its plans to increase significantly advertising rates after eliminating *New Times LA* as a competitive alternative. Similarly, in Cleveland, New Times told advertisers that their advertising rates would increase now that its newsweekly, the *Cleveland Scene*, was "the only game in town."

12. The Defendants' agreement, which eliminated their substantial head-to-head rivalry in Cleveland and Los Angeles, is an unreasonable restraint of interstate trade that constitutes a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

13. The United States seeks to terminate the Defendants' illegal agreement, to enjoin future conduct in furtherance of any such agreement, and to obtain other equitable relief necessary to restore competition for the benefit of advertisers and readers in Cleveland and Los Angeles.

II. JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction under Section 4 of the Sherman Act (15 U.S.C. § 4) and under 28 U.S.C. §§ 1331 and 1337 to prevent and restrain the Defendants from continuing to violate Section 1 of the Sherman Act (15 U.S.C. § 1).

15. Venue is proper in this judicial district under Section 12 of the Clayton Act (15 U.S.C. § 22), and under 28 U.S.C. §§ 1391(b)(2) and (c) because a substantial part of the events giving rise to the offense occurred here and the Defendants transact or have transacted business here.

III. THE DEFENDANTS

16. Defendant Village Voice Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. Village Voice Media owned alternative newsweeklies in New York City, Minneapolis-St. Paul, Cleveland, Seattle, Nashville, Los Angeles, and Orange County, California.

17. Village Voice Media's *Cleveland Free Times*, launched in 1992, grew to become Ohio's largest alternative newsweekly, with an average weekly circulation that tripled in recent years to over 80,000. Until its sudden closing on October 2, 2002, it directly competed against New Times's alternative newsweekly, the *Cleveland Scene*.

18. Village Voice Media's *LA Weekly*, launched in 1978, grew its weekly circulation to approximately 215,000 and averages 200 pages an issue—the highest page count of an alternative newsweekly in the United States. Until October 3, 2002, its direct competitor was New Times's alternative newsweekly, the *New Times LA*.

19. Defendant NT Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Phoenix, Arizona. New Times owned alternative newsweeklies in Phoenix, Cleveland, Los Angeles, San Francisco, Oakland-Berkeley, Palm Beach-Broward, Miami, Denver, St. Louis, Kansas City, Dallas, and Houston.

20. In the summer of 1996, New Times purchased two established alternative newsweeklies, the *Los Angeles View* and the *Los Angeles Reader*, for approximately \$4 million and consolidated and renamed them the *New Times Los Angeles*. To better compete against the *LA Weekly*, New Times grew its newsweekly's circulation to approximately 120,000 copies, aggressively discounted its advertising rates, and offered award-winning journalism.

21. Village Voice Media and New Times sell advertising to national advertisers throughout the United States and to local advertisers in cities where they own alternative newsweeklies. Upon consummation of their illegal market-allocation agreement, Village Voice Media and New Times transmitted over \$13 million in interstate commerce. Village Voice

Media and New Times are engaged in, and their activities substantially affect, interstate commerce.

IV. FACTS

A. The Alternative Newsweekly Industry

22. The first alternative newsweekly was *The Village Voice*, a New York City-based publication started by Village Voice Media's predecessors in 1955. Since that time, the popularity of alternative newsweeklies has increased dramatically, fueled by the typically "anti-establishment" perspective of these publications which emerged during the 1960s and 1970s. Today over 125 alternative newsweeklies are published throughout the United States.

23. The local nature of these alternative newsweeklies, which offer in-depth coverage of local happenings in the arts, music, politics, and entertainment fields, makes them particularly attractive to advertisers hoping to reach a young, educated, and urban audience in a cost-effective manner. Between 1990 and 2000, the collective weekly circulation of alternative newsweeklies more than doubled to 7.8 million. Likewise, advertising expenditures in alternative newsweeklies in the United States have jumped, exceeding \$500 million in 2000.

24. Two major chains dominate the alternative newsweekly industry: Defendants New Times and Village Voice Media. New Times, the leading chain, distributes each week over 1.1 million copies of its various alternative newsweeklies. Village Voice Media operates on a similar scale, with a weekly circulation of over 800,000 for its alternative newsweeklies.

B. The Defendants' Competitive Battle in Cleveland and Los Angeles

25. Before the *per se* illegal agreement and conduct at issue, the Defendants vigorously competed for readers and advertisers in Cleveland and Los Angeles.

26. From 1998 when New Times purchased the *Cleveland Scene* until October 2, 2002, the *Cleveland Scene* and the *Cleveland Free Times* competed fiercely. This competition resulted in steep discounts off the Defendants' published advertising rate cards, better customer service, increased promotions, and a host of value-added services offered at little cost to advertisers, such as "buy one ad, get one free" deals, larger advertisements for the same price, or free upgrades of advertisements from black-and-white to color.

27. Before the Defendants' *per se* illegal market-allocation agreement, both readers and advertisers in the Cleveland market benefitted from this competition between the *Cleveland Scene* and the *Cleveland Free Times*, resulting in better editorial coverage, heavily discounted advertising rates, and higher quality service.

28. From 1996 until October 2, 2002, advertisers benefitted from the competition between *New Times LA* and Village Voice Media's *LA Weekly* with lower advertising rates, better advertisement placement, and improved service. Even if they did not advertise in the *New Times LA*, advertisers could leverage that alternative newsweekly in their negotiations with the older, entrenched *LA Weekly*. Moreover, the *New Times LA* discounted significantly off its published rate cards, benefitting smaller advertisers who could not afford the *LA Weekly*'s higher advertising rates.

29. Before the Defendants' *per se* illegal market-allocation agreement, both readers and advertisers in the Los Angeles market benefitted from the competition between the *LA Weekly* and the *New Times LA*, resulting in better editorial coverage, lower advertising rates, and higher quality service.

C. The Illegal Market-Allocation Agreement

30. In July 2002, New Times proposed to Village Voice Media to end finally the competitive war by agreeing to “swap” markets: New Times would close its *New Times LA* publication, making Village Voice Media’s *LA Weekly*, in the words of the Defendants’ executives, the “only alternative weekly in LA.” Likewise, Village Voice Media would close its *Cleveland Free Times* leaving New Times’s *Cleveland Scene* “the only alternative weekly in Cleveland.”

31. By August 12, 2002, the Defendants had agreed in principle to swap markets. Over the next two months, New Times’s and Village Voice Media’s senior executives and attorneys negotiated the terms of their contracts to effectuate their proposed market swap.

32. As part of this agreement, Village Voice Media would compensate New Times for withdrawing from the larger Los Angeles market by paying New Times \$9 million in cash.

33. The proposed deal effectively ended all competition between the Defendants and created an opportunity for the sole remaining alternative newsweekly in each market to raise advertising rates.

34. On October 1, 2002, New Times’s and Village Voice Media’s senior executives signed two contracts, each expressly contingent on the other, which memorialized and effectuated their illegal market-allocation arrangement.

35. The Defendants already had agreed two months earlier that each would withdraw from one of the two markets by closing their competing newsweekly. Consequently, the Defendants’ written agreements did not involve the transfer or integration of meaningful economic assets associated with those shuttered papers. New Times merely shifted the *New*

Times LA's accounts receivable, customer lists, and advertising contracts to Village Voice Media, which, in exchange, shifted the *Cleveland Free Times*'s customer lists, advertising contracts, street boxes, and accounts receivable to New Times. These advertisers were already well known to the Defendants, since each Defendant had attempted to convert the other's advertisers. Moreover, the net assets (primarily the accounts receivable) actually transferred in Los Angeles accounted, according to the Defendants' calculations, for only seven percent of their \$11 million sale price in Los Angeles, and twenty-four percent of their \$2 million sale price in Cleveland.

36. The Defendants' written agreements specifically excluded the sale of most of the assets associated with the actual operations and goodwill of the two shuttered newsweeklies, notably: (A) the advertising personnel, writers, editors, and other employees, (B) leases, office and computer equipment, (C) back issues and archived materials of the closed publications, including editorial articles, photos, and art work, and (D) the logos, trade names, trademarks, and copyrights associated with the closed publications. New Times specifically retained the rights to its *New Times LA* logo or "flag" and Village Voice Media specifically retained its *Cleveland Free Times* logo or "flag," however, both Defendants were prevented contractually from using these logos.

37. The explicit terms of the written agreements ensured that neither Defendant would face competition in its "protected" market. The agreements contained essentially identical "Non-Competition" clauses in which each Defendant agreed not to publish an alternative newsweekly in the other Defendant's market for at least ten years. Each Defendant also agreed not to solicit or attempt to induce advertisers to advertise in a competing publication over the

next decade. The written agreements further required each Defendant to redirect traffic on its closed newsweekly's website to the other Defendant's website for one year, and to state prominently on its website that its alternative newsweekly was no longer in circulation.

38. The written agreements also sought to deter any new competitive entry into each Defendant's protected market. Over the next decade, Village Voice Media agreed not to use, and to prevent anyone else from using, the name "*Cleveland Free Times*" in connection with any current or future publication in the Greater Cleveland Area while New Times agreed not to use, and to prevent anyone else from using, the name "*New Times LA*" in the Greater Los Angeles Area. Furthermore, both Defendants agreed not to sell or otherwise make available the fixed assets associated with their closed publication to former employees, consultants, or independent contractors in the affected markets.

39. On October 2, 2002, one day after signing the written agreements, the Defendants' senior executives publicly announced that the *Cleveland Free Times* and *New Times LA* were closed.

40. While the *Cleveland Free Times* and *New Times LA* staffs were told of the shut-down, telephones and websites associated with those newsweeklies were redirected immediately to the New Times's and Village Voice Media's surviving newsweeklies, the *Cleveland Scene* and the *LA Weekly*. The *Cleveland Free Times*'s advertising contracts were given to the *Cleveland Scene* while the *New Times LA* advertising contracts were given to the *LA Weekly*.

41. Advertising representatives of the Defendants' remaining alternative newsweekly in each market quickly notified advertisers of their new rate policies, pressuring some advertisers to sign long-term contracts.

42. The *Cleveland Scene* immediately implemented rate increases, and as reported to the New Times's Board on October 22, 2002, the market swap was a "success" because it provided the *Cleveland Scene* with additional revenue of "nearly \$40,000 per week."

43. Likewise, Village Voice Media executives recommended significant advertising-rate hikes in Los Angeles: for retail establishments and clubs, for example, one Village Voice Media executive recommended "aggressive rates on a bump up." Some advertisers might be offered "rate protection for some period of time before the next price increase if they sign up for it right away." In other words, it was only a matter of time for some advertisers before Village Voice Media began collecting its monopoly rents. Because of these aggressive rate hikes, Village Voice Media's *LA Weekly* might lose some advertisers for "a month or two," admitted one senior Village Voice Media executive, "but being the only game in town, they will come back."

44. One month later, after the United States' investigation became public, the New Times's group publisher told the publisher of the *Cleveland Scene*, "Given all the press it may work to our advantage to be able to say that we haven't raised rates and we are not raising rates." Nevertheless, on November 20, 2002, the New Times executive instructed the *Cleveland Scene*'s publisher in an e-mail to raise advertising rates indirectly, by no longer offering advertisers a discounted 52-week volume rate and by no longer discounting off the *Cleveland Scene*'s published rate card—as the newsweekly had done routinely and aggressively to compete against the *Cleveland Free Times*. When the publisher reported by e-mail ten minutes later with "the good news [that] the 40 & 52 [week discounted frequency rates] are off the card already," the New Times executive responded, "good."

FIRST CAUSE OF ACTION
(Per Se Violation of Section 1 of the Sherman Act)

45. The United States hereby incorporates paragraphs 1 through 44.

46. The Defendants' combination and conspiracy consisted of an agreement, understanding, and concert of action among the Defendants and co-conspirators, the substantial terms of which were to allocate territories and customers among themselves for the readership of, and advertising in, alternative newsweeklies in the seven-county Greater Cleveland Area and five-county Greater Los Angeles Area.

47. For the purpose of forming and carrying out this combination and conspiracy, the Defendants and co-conspirators, among other things:

- (A) participated in meetings and conversations to discuss allocating territories among themselves;
- (B) participated in meetings and conversations to discuss allocating customers among themselves;
- (C) agreed, during such meetings and conversations, to allocate to New Times the alternative newsweekly readers and advertisers in the seven-county "Greater Cleveland Area," which the Defendants agreed consisted of the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina, and Lorain in the State of Ohio;
- (D) agreed to allocate to Village Voice Media the alternative newsweekly readers and advertisers in the five-county "Greater Los Angeles Area," which the Defendants agreed consisted of the counties of Los Angeles, Orange, San Bernardino, Riverside, and Ventura in the State of California;

- (E) agreed not to compete in each other's allocated market for at least ten years;
- (F) agreed that Village Voice Media would close its wholly-owned alternative newsweekly, the *Cleveland Free Times*, in the Greater Cleveland Area;
- (G) agreed that New Times would close its wholly-owned alternative newsweekly, the *New Times Los Angeles*, in the Greater Los Angeles Area;
- (H) agreed that Village Voice Media would pay approximately \$9 million in cash to New Times for the difference between the Cleveland and Los Angeles markets;
- (I) agreed that in the Greater Cleveland and Los Angeles Areas neither Defendant could use the name of the "*Cleveland Free Times*" or "*New Times Los Angeles*" or any variant thereof; and that Defendants would prevent any other person from using those names;
- (J) agreed not to sell or otherwise make available to any of their former or current employees, consultants, or independent contractors in the Greater Cleveland and Los Angeles Areas any of the fixed assets used in the operation of the closed alternative newsweeklies, and agreed to prevent others from obtaining those assets; and
- (K) agreed to allocate advertisers and not to induce or attempt to induce any advertiser to terminate its relationship with the other Defendant or to advertise in any other print publication in the Greater Cleveland and Los Angeles Areas.

48. The Defendants' conduct constitutes a horizontal market and customer allocation agreement designed to eliminate competition for advertisers in, and readers of, alternative newsweeklies, and is *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1.

SECOND CAUSE OF ACTION
(“Rule of Reason” Violation of Section 1 of the Sherman Act)

49. The United States hereby incorporates paragraphs 1 through 48.

50. Alternative newsweeklies constitute two distinct, but interdependent, economic product markets: (A) competition for readers of alternative newsweeklies; and (B) competition for the sale of advertising in alternative newsweeklies.

51. The Defendants' market allocation agreement adversely affects both product markets. Although the Defendants' alternative newsweeklies in the Cleveland and Los Angeles Markets are distributed for free, the Defendants competed through their alternative newsweeklies' news and advertising content to attract readers. That readership was, in turn, sold to the buyers of advertising space.

52. The relevant geographic market for alternative newsweeklies published in the greater Cleveland metropolitan area includes, as the Defendants define in their market allocation agreement, these seven counties in the state of Ohio: Cuyahoga County, Medina County, Lorain County, Lake County, Geauga County, Portage County, and Summit County (the “Cleveland Market”).

53. The relevant geographic market for alternative newsweeklies published in the greater Los Angeles metropolitan area includes, as the Defendants define in their market allocation agreement, these five counties in the State of California: Los Angeles County, San

Bernardino County, Orange County, Riverside County, and Ventura County (the “Los Angeles Market”).

54. The Defendants’ conduct constitutes a horizontal market and customer allocation agreement designed to eliminate competition for advertisers in, and readers of, alternative newsweeklies in the Cleveland and Los Angeles Markets, and is an unreasonable restraint of trade under Section 1 of the Sherman Act, 15 U.S.C. § 1.

REQUESTED RELIEF

The United States requests that:

- (A) the Court adjudge and decree that the Defendants’ horizontal market and customer allocation agreement constitutes an illegal restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act;
- (B) the Court issue an order declaring the Defendants’ market and customer allocation agreement null and void, including the two interlocking written contracts which formalized that arrangement;
- (C) the Court order prompt divestiture of assets used in connection with the publication of the Defendants’ alternative newsweeklies in the Greater Los Angeles and Cleveland Areas for the purpose of establishing a viable competitive alternative newsweekly in the respective geographic markets;
- (D) the Defendants, their officers, directors, agents, employees, and successors and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner, directly or indirectly, entering into, continuing, maintaining, or renewing the market or customer allocation agreement, or from

engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

- (E) the United States be awarded costs of this action; and
- (F) the Plaintiff have such other relief as the Court may deem just and proper to redress, and prevent recurrence of, the alleged violation and to dissipate the anticompetitive effects of New Times and Village Voice Media's violation.

DATED: 27 January 2003

FOR PLAINTIFF UNITED STATES OF AMERICA

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