

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

OUTDOOR SYSTEMS, INC.,

Defendant.

Civil No. 1-94-CV-2393-CC
Filed: September 8, 1994
Judge Clarence Cooper

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Outdoor Services, Inc. in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On September 8, 1994, the United States filed a civil antitrust complaint, under Section 15 of the Clayton Act, 15 U.S.C. § 25, against Outdoor Services, Inc., alleging that the proposed acquisition by Outdoor Services, Inc. ("OSI") of the outdoor advertising business of Capitol Outdoor Advertising, Inc. ("Capitol") would violate Section 7 of the

Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the effect of the merger may be substantially to lessen competition in outdoor advertising in the Atlanta area. The Complaint seeks, among other relief, a permanent injunction preventing defendant from combining its outdoor advertising business with that of Capitol.

Also on September 8, 1994, the United States and OSI filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to preserve competition in the outdoor advertising business in the Atlanta area. The proposed Final Judgment, as explained more fully below, would allow OSI to acquire the outdoor advertising business of Capitol but orders OSI to divest its own outdoor advertising business in the Atlanta area within six months. The Final Judgment also provides that pending the sale of OSI's outdoor advertising business, a holding company will be established to hold separate the businesses of OSI and Capitol.

The United States and OSI have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment and to punish violations of the Final Judgment.

II.

BACKGROUND TO THE ALLEGED VIOLATION

On or about July 27, 1994, OSI and Capitol entered into a

purchase agreement under which the two companies would merge and OSI would become the sole surviving entity. This acquisition would, if unchallenged, effectively merge all of the business of OSI and Capitol. The purchase price was approximately \$40 million.

OSI is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices at 2502 North Black Canyon Highway, Phoenix, Arizona. OSI is in the business of providing outdoor advertising services in the Atlanta area. OSI's Atlanta area office is located at 3745 Atlanta Industrial Drive, N.W., Atlanta, Georgia. OSI had outdoor advertising revenues in the Atlanta area of about \$7.4 million in 1993.

Capitol is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices at 732 Ashby Street, N.W., Atlanta, Georgia. Capitol is in the business of providing outdoor advertising services in the Atlanta area. Capitol had outdoor advertising revenues in the Atlanta area of about \$17.1 million in 1992.

The Complaint alleges that OSI and Capital are significant competitors in the outdoor advertising market in the Atlanta area. Outdoor advertising is another name given to standardized billboard advertising in the United States. There are several types of billboards. The largest type of billboard is the "bulletin," which comes in two standard sizes, 14' tall by 48' long, or 20' high by 60' long. If painting is the

method of reproduction, the bulletin is called a "paint" or a "painted bulletin." If posting is the method of reproduction, the bulletin is called a "posted bulletin." Bulletin billboards are frequently sold singly to advertisers at negotiated rental prices that depend primarily on each billboard's location. Bulletins sold in this fashion are called "permanent bulletins" and command, on average, the highest rent of any type of billboard. Bulletins are also rented as part of "rotary" plans by billboard companies. A rotary plan consists of rotating an advertiser's bulletin message to a number of well distributed bulletin locations within a metropolitan area. Usually located adjacent to interstate highways and high traffic arterials, bulletins are typically sold to advertisers for longer contract periods than other types of billboards because of the high initial expense in painting or posting the advertiser's message or illustration.

A second type of standardized billboard is the "poster panel," which comes in one size, 12' high by 25' long and which is customarily sold in packages called "showings." A "100 showing" of poster panels means that the billboard company will provide enough geographically distributed poster panels to deliver in one day a number of exposure opportunities, as measured by the traffic count past all the poster panels included in the showing, equal to 100% of the population of that particular market. In the Atlanta area, for example, a

100 showing requires approximately 120 poster panels. The advertising message on a poster panel billboard is carried on a printed paper poster. Poster panels are nearly always sold in groups by billboard companies and usually for a shorter contract period than painted bulletin billboards. Poster panels are generally located adjacent to primary arterial roads and busy secondary streets. The rental price for each poster panel in a showing averages about one-fifth of the rental price for each painted bulletin in a rotary.

A third type of standardized billboard is the "8-sheet," sometimes referred to as a "junior billboard." An 8-sheet is approximately 6' high by 12' long. An advertiser's message on an 8-sheet is usually carried on a printed paper poster. In the Atlanta area, nearly all 8-sheet locations are in inner city areas, and 8-sheets are usually sold in packages directed to residents of the areas in which they are located. An 8-sheet rents, on average, for less than one-third the rental price of a poster panel.

Many customers who use outdoor advertising also advertise in other media, especially radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Since exposure is necessarily brief, outdoor advertising is most suitable for highly visual, limited informational advertising. Outdoor advertising's particular characteristics make it a type of advertising for which there are no close

substitutes. The Complaint alleges that the customers who want or need to use outdoor advertising would not switch to another advertising medium in response to a small but significant increase in outdoor advertising rental prices.

The Atlanta area includes the City of Atlanta and the five populous counties that include and surround that city. The vast majority of the population of the greater Atlanta region lives or works in the Atlanta area and most of that region's commercial activity occurs in the Atlanta area. Advertisers who desire to employ outdoor advertising to reach the Atlanta consumer market have no reasonable substitute for billboards located within the Atlanta area; in particular, a small but significant increase in the price of outdoor advertising in the Atlanta area would not cause advertisers to turn to billboards located in more rural counties outside of the Atlanta area. About 93% of Capitol's and OSI's billboard sites are located in the Atlanta area. The Atlanta area constitutes a section of the country and relevant geographic market for antitrust purposes.

OSI and Capitol are the only companies that offer a full line of billboards in the Atlanta area. Together, OSI and Capitol control over 63% of all billboards in the Atlanta area. They are the only sellers of poster panel billboards and are two of only four sellers of bulletin rotary billboard service in the Atlanta area. A combined OSI-Capitol entity would control about 4,000 bulletin and poster panel billboards

in the Atlanta area, over six times the total of the next largest outdoor advertising company in the Atlanta area and approximately eleven times the total of the third largest. The proposed acquisition of Capitol by OSI would raise OSI's market share of the outdoor advertising business in the Atlanta area, based upon the number of billboards, from approximately 24% to approximately 63%.

The Complaint further alleges that successful new entry into the outdoor advertising market in the Atlanta area is not easy, due in part to the increasing amount of government regulation limiting billboard construction, the scarcity of suitable billboard sites within the Atlanta area, particularly within the I-285 Perimeter around Atlanta, and the necessity of obtaining a sufficient number and geographic dispersion of billboard sites in order to be an effective competitor.

OSI regularly contracts with customers outside the State of Georgia for the sale of outdoor advertising in the Atlanta area and regularly receives outdoor advertising materials from outside of Georgia. OSI is engaged in interstate commerce, and its activities are in the flow of, and substantially affect, interstate commerce.

III.

EFFECT ON COMPETITION

The effect of OSI's acquisition of Capitol's outdoor advertising business in the Atlanta area may be substantially to lessen competition in outdoor advertising in the Atlanta

area because actual and potential competition between OSI and Capitol in outdoor advertising in the Atlanta area will be eliminated, and competition generally in outdoor advertising in the Atlanta area may be substantially lessened.

IV.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the proposed merger of OSI and Capitol may be substantially to lessen competition, in violation of Section 7, in the Atlanta area outdoor advertising market. The risk posed to competition by this transaction, however, would be substantially eliminated were defendant OSI to divest its outdoor advertising business to a purchaser that would operate it as an active, independent and financially viable competitor in the Atlanta area. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale of OSI's outdoor advertising business and to prevent the anticompetitive effects of the proposed acquisition.

The Final Judgment allows OSI to acquire the outdoor advertising business of Capitol, but requires OSI to sell its Atlanta outdoor advertising business to an independent third party within six months. The United States has the right to approve the purchaser. If OSI does not accomplish the sale within six months, a trustee will be appointed by the Court with full powers to make the sale. Pending the sale of OSI's Atlanta outdoor advertising business, a holding company will be

established to preserve and hold separate the assets and business operations of OSI and Capitol. The proposed Final Judgment should ensure that an appropriate purchaser will obtain OSI's divested outdoor advertising business and operate it as a competitive member of the Atlanta area outdoor advertising market.

V.

REMEDIES AVAILABLE TO POTENTIAL LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any private lawsuit that may be brought against the defendant.

VI.

PROCEDURES AVAILABLE FOR MODIFICATION OF
THE PROPOSED FINAL JUDGMENT

The United States and OSI have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. The stipulation provides that entry of the Final Judgment does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the

provisions of the APPA, the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. The Department believes that the proposed Final Judgment provides an adequate remedy for the alleged violation and is in the public interest. The term of the proposed Final Judgment is until the divestiture of OSI's Atlanta business is accomplished.

As provided by the APPA, any person believing that the proposed Final Judgment should be modified may submit written comments within the sixty-day period from the date of publication in the Federal Register to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Suite 1176, 75 Spring Street, S.W., Atlanta, GA 30303. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over these actions, and any party may apply to the Court for any order necessary or appropriate for their modification, interpretation or enforcement.

VII.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, litigation to enjoin the merger. The

United States rejected that alternative because the relief in the proposed Final Judgment should prevent the possible occurrence of conduct the effect of which may be substantially to lessen competition in the outdoor advertising industry in the Atlanta area. The United States believes that in the hands of the appropriate purchaser, the outdoor advertising business that is divested will likely maintain the present level of competition in the Atlanta area.

VIII.

DETERMINATIVE DOCUMENTS

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated:

John T. Orr
Georgia Bar No.: 554625

Justin M. Nicholson

William G. Traynor

Attorneys
Antitrust Division
U.S. Department of Justice
Richard B. Russell Building
75 Spring Street, S.W.
Suite 1176
Atlanta, Georgia 30303
(404) 331-7100