UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
450 Fifth Street, N.W. Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

CLEAR CHANNEL OUTDOOR HOLDINGS, INC.,
200 East Basse Road
Suite 100
San Antonio, TX 78209,

and

FAIRWAY MEDIA GROUP, LLC,
3801 Capital City Blvd.
Lansing, MI 48906

Defendants.

CASE NO.

JUDGE:

FILED:

COMPLAINT

The United States of America ("Plaintiff"), acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the transaction between Defendants Clear Channel Outdoor Holdings, Inc. ("Clear Channel") and Fairway Media Group, LLC ("Fairway") and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. Clear Channel and Fairway sell outdoor advertising on billboards to local and national customers in numerous metropolitan areas throughout the United States. Among other metropolitan areas, they compete head-to-head to sell advertising on billboards that are located in Indianapolis, Indiana and Atlanta, Georgia (collectively, the "Metropolitan Markets"). Within each of the Metropolitan Markets, Clear Channel and Fairway own and operate billboards that are located in close proximity to each other and therefore constitute attractive competitive alternatives for advertisers that seek to advertise on billboards in those specific areas.

2. On March 3, 2016, Clear Channel and Fairway entered into an asset exchange pursuant to which Clear Channel would acquire certain Fairway billboards located in Atlanta and Fairway would acquire certain Clear Channel billboards located in Indianapolis, along with billboards in other metropolitan areas.

3. If consummated, the proposed transaction would eliminate the substantial head-to-head competition between Clear Channel and Fairway within each of the Metropolitan Markets. Head-to-head competition between Clear Channel and Fairway billboards that are located in close proximity to each other in each of the Metropolitan Markets has benefitted advertisers through lower prices and better services. The proposed transaction threatens to end that competition in these areas in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

4. The United States brings this action pursuant to 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.

5. The Court has subject matter jurisdiction over 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.

6. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. They each own and operate billboards in various locations throughout the United States and sell outdoor advertising in the geographic areas where their billboards are located. Their sale of advertising on billboards has had a substantial effect upon interstate commerce.

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

III. THE DEFENDANTS AND THE TRANSACTION

8. Clear Channel is a Delaware corporation, with its corporate headquarters in San Antonio, Texas. Clear Channel is one of the largest outdoor advertising companies in the United States. Clear Channel reported consolidated revenues of over $2.8 billion in 2015. As of December 31, 2015, Clear Channel owned or operated more than 650,000 outdoor advertising displays worldwide. It owns and operates billboards in each of the Metropolitan Markets.

9. Fairway is a Delaware limited liability company with its headquarters in Duncan, South Carolina. Fairway owns or operates outdoor advertising displays in fifteen states. Fairway had revenues of approximately $110 million in 2015. Fairway also owns and operates billboards in each of the Metropolitan Markets.

10. Pursuant to an Asset Purchase and Exchange Agreement dated March 3, 2016, Clear Channel and Fairway agreed to exchange billboards in a transaction valued at $150 million. Specifically, the parties agreed that Clear Channel would acquire certain Fairway billboards located in Atlanta and Fairway would acquire certain Clear Channel billboards located in Indianapolis and Sherman/Denison, Texas. Although the Asset Purchase and Exchange Agreement originally provided that Fairway would acquire certain Clear Channel billboards in Rochester, Minnesota, and that Clear Channel would acquire additional Fairway billboards in Atlanta, the parties subsequently amended their agreement to remove the Rochester assets and the additional Atlanta assets from the transaction.

IV. THE RELEVANT MARKETS

11. The relevant markets for purposes of Section 7 of the Clayton Act are the sale of outdoor advertising on billboards to advertisers targeting consumers located in areas no larger than the Metropolitan Markets, and likely smaller areas within each of the Metropolitan Markets where the parties own and operate billboards in close proximity to each other.

12. Clear Channel and Fairway generate revenue from the sale of outdoor advertising to local and national businesses that want to promote their products and services. Outdoor advertising is available in a variety of sizes and forms for advertising campaigns of differing styles and duration. Outdoor advertising sales include selling space on billboards and posters, public transportation, such as subways and buses, and other public spaces, such as bus stops, kiosks, and benches.

13. Outdoor advertising has prices and characteristics that are distinct from other advertising media platforms like radio, television, the Internet, newspapers, and magazines. Outdoor advertising is suitable for highly visual, limited-information advertising, because consumers are exposed to an outdoor advertisement for only a brief period of time as they travel

through specific geographic areas. Outdoor advertisements typically are less expensive and more cost-efficient when compared to other media at reaching an advertiser's target audience. Many advertisers use outdoor advertisements when they want a large number of exposures to consumers at a low cost per exposure. Such advertisers do not view other advertising mediums or platforms as close substitutes.

14. Advertisers often choose a particular form of outdoor advertising over other outdoor advertising forms based upon the purpose of an advertising campaign, the target demographic group, and the geographic area where that campaign is to occur. For this reason, some outdoor advertising forms compete more closely with each other when compared to other outdoor advertising forms. And certain outdoor advertising forms compete more closely with each other depending upon their specific geographic locations.

15. With respect to outdoor advertising forms, billboards compete most closely with other billboards located in the same geographic area. Advertisers select billboards over other outdoor advertising forms based upon a number of factors. These include the size and demographic of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic and commuting patterns of the audience, and other audience characteristics. Additionally, in certain geographic areas, other forms of outdoor advertising are not present.

16. The precise geographic location of a particular billboard is also important to advertisers. Many advertisers need to reach consumers in a particular city, part of a city, metropolitan area, or part of a metropolitan area. They also seek to reach certain demographic categories of consumers within a city or metropolitan area. Consequently, many advertisers select billboards that are located on highways, roads and streets where the vehicle and pedestrian traffic of that target audience is high, or where that traffic is close to the advertiser's commercial

locations. By selecting billboards in these locations, advertisers can ensure that their target audience will frequently view billboards that contain their advertisements. If different firms own billboards that are located in close proximity to each other that would efficiently reach an advertiser's target audience, the advertiser would benefit from the competition among those billboard firms to offer better prices and services.

17. At a minimum, billboard companies could profitably impose a small but significant and non-transitory increase in price ("SSNIP") to those advertisers who view billboards in certain geographic locations either as their sole method of advertising or as a necessary advertising complement to other media, including other outdoor advertising forms. Consequently, for many advertisers who want to advertise on billboards in each of the Metropolitan Markets or in certain smaller areas within each of the Metropolitan Markets, the imposition of a SSNIP would not cause these advertisers to switch some of their advertising to other media, other outdoor advertising forms, or to billboards located outside each area.

18. For all of the above reasons, for purposes of analyzing the competitive effects of the proposed transaction, the relevant product market is outdoor advertising on billboards and the relevant geographic markets are no larger than each of the Metropolitan Markets, and may consist of considerably smaller areas within each of those Metropolitan Markets where the parties own and operate billboards in close proximity to each other.

V. LIKELY ANTICOMPETITIVE EFFECTS

19. Market concentration is often one useful indicator of the likely competitive effects of a transaction. Concentration in each of the Metropolitan Markets and in certain smaller areas within each of the Metropolitan Markets would increase significantly as a result of the proposed transaction.

20. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index ("HHI") is a standard measure of market concentration (defined and explained in Appendix A). The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the *Horizontal Merger Guidelines*.

21. In each of the Metropolitan Markets, and in certain smaller areas within each of the Metropolitan Markets, the market for outdoor advertising on billboards is highly concentrated. The proposed transaction between Clear Channel and Fairway would result in HHIs in excess of 2,500 in each of the Metropolitan Markets and in certain areas within each Metropolitan Market. These post-transaction HHIs, which reflect increases of more than 200 points in each Metropolitan Market and in certain areas within each Metropolitan Market, are well above the 2,500 threshold at which a transaction is presumed likely to enhance market power.

22. In addition to increasing concentration, the proposed transaction will eliminate head-to-head competition between Clear Channel and Fairway by bringing under the control of one firm billboards that are close substitutes, based on their geographic locations, in areas with limited alternatives. In some of the areas within each of the Metropolitan Markets, there are no other competing billboards that would be attractive competitive alternatives to Clear Channel's and Fairway's billboards. In other areas within each of the Metropolitan Markets, there are other competitors present, but the number of billboards or their quality is insufficient to preclude the exercise of market power by Clear Channel or Fairway post-transaction.

23. In each of the Metropolitan Markets, there are significant barriers to entry, including governmental regulations that limit new billboard construction. Therefore, it is unlikely that any new entry or repositioning from existing firms would be sufficient or timely to defeat Clear Channel or Fairway from profitably imposing a SSNIP on their billboards in the Metropolitan Markets and in certain smaller areas within the Metropolitan Markets.

VI. VIOLATION ALLEGED

24. The United States hereby repeats and realleges the allegations of paragraphs 1 through 23 as if fully set forth herein.

25. Clear Channel's proposed transaction with Fairway likely would substantially lessen competition in interstate trade and commerce in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Unless enjoined, the proposed transaction likely would have the following anticompetitive effects, among others:

a) competition in the sale of outdoor advertising on billboards in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets would be substantially lessened;
b) actual and potential competition between Clear Channel and Fairway in the sale of outdoor advertising on billboards in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets would be eliminated; and
c) prices for outdoor advertising on billboards in each of the Metropolitan Market and in certain areas within each of the Metropolitan Markets would likely increase, and the quality of services would likely decline.

VII. REQUEST FOR RELIEF

26. The United States requests:

a) that the Court adjudge the proposed transaction to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b) that the Court permanently enjoin and restrain Defendants from carrying out the proposed transaction, or entering into any other agreement, understanding, or plan by which Clear Channel and Fairway would exchange billboards in each of the Metropolitan Markets;

c) that the Court award the United States the costs of this action; and

d) that the Court award such other relief to the United States as the Court may deem just and proper.

Dated: December 22, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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APPENDIX A

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* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*