UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
BIRMINGHAM DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. CV85 C 0210S
	)	
v.	)	Filed: January 22, 1985
	)	
R. C. COBB, INC.,	)	
	)	
Defendant.	)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §16(b)), the United States hereby submits this competitive impact statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

The United States has filed, simultaneously with the filing of the proposed final judgment, a complaint alleging that R. C. Cobb, Inc. ("Cobb") has engaged in a conspiracy in unreasonable restraint of interstate commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1). Entry by the Court of the final judgment will terminate this action. The Court will retain jurisdiction over this matter for such further proceedings as may be required to interpret, modify, or enforce the judgment, or to punish violations thereof.

II.

DESCRIPTION OF THE ALLEGED VIOLATION

The Complaint alleges that, beginning in the Fall of 1983 and continuing into July 1984, Cobb and its co-conspirators participated in an agreement, known in the motion picture industry as a split agreement, to eliminate competition among exhibitors in Birmingham, Huntsville, and Tuscaloosa, Alabama ("the three-city area") for licenses to films being offered by motion picture distributors for exhibition there.1/ A split agreement is a type of cartel agreement. In a split, exhibitors get together and agree among themselves as to which of them will have the right to negotiate, without competition from the other split participants, with a distributor for a license to exhibit a particular motion picture. The court in United States v. Capitol Service, Inc., 568 F. Supp. 134 (E.D. Wis. 1983), ruled that all split agreements, while varying in their mechanics, shared critical anti-competitive characteristics and were per se illegal.

1/ Simultaneously with the filing of the complaint, the United States filed a criminal information against Cobb charging it with a violation of Section 1 of the Sherman Act by participation in the split agreement in the three-city area. Pursuant to a plea agreement, Cobb has agreed to plead guilty to the criminal information and pay a $100,000 fine.

In order to understand the nature of a split agreement, some background information on the motion picture industry and the licensing of motion pictures is useful. The motion picture industry encompasses three activities: production, distribution, and exhibition. Producers make motion pictures and enter into agreements with distributors to have their films distributed nationally to theatres that are owned or operated by exhibitors. Some distributors also produce motion pictures or, in other instances, finance the work of independent producers.

Distributors license motion pictures for exhibition on a picture-by-picture, theatre-by-theatre basis in each local market. Where two or more exhibitors operate theatres in a market, a distributor may license its films by competitive bidding or by negotiating with competing theatres.

Exhibitors are awarded motion picture license agreements based on the offers they submit to a distributor in response to competitive bid solicitations or during negotiations. The offers that exhibitors submit for licenses include, among other things, terms for film rental (generally a percentage of the gross or net box office receipts), specific playdates, and length of playtime (including the conditions under which the film will be held over). The offers may also include a guarantee, which is a minimum film rental payment that the

exhibitor promises to pay the distributor regardless of the financial success of the film, or an advance, which is an advance payment to be applied against the film rental actually earned under the percentage rental terms in the license.

When a distributor receives competitive bids or competitively-negotiated offers on a motion picture, it awards the license to the theatre making the best offer. In deciding which is the best offer, the distributor takes into account not only the licensing terms offered by the competing exhibitors but also the overall grossing potential of their theatres, which is determined by theatre size, quality, and location. In local markets where there are no agreements among exhibitors to restrain competition, competing exhibitors know that to obtain a particular motion picture license they must offer the distributor a better deal than is offered by their competitors.

The split agreement that is the subject of the proposed final judgment arose out of recent events in the Birmingham, Huntsville, and Tuscaloosa motion picture exhibition markets. Consolidated Theatres, Inc. ("Consolidated") entered the Huntsville market in 1977 by opening the University theatre; Cobb did not, at that time, operate a theatre in Huntsville. In 1982, Consolidated expanded its operations in Alabama by opening theatres in Birmingham and Tuscaloosa, two cities where Cobb previously had a monopoly position as the only exhibitor. Also in 1982, Cobb entered the Huntsville market by obtaining theatres there.

Consolidated's entry into Birmingham and Tuscaloosa and Cobb's entry into Huntsville led to intense competition between the two companies for film licenses. This competition, which took the form of competitive bidding and competitive negotiations, led to the payment of film rental terms by Cobb and Consolidated that were generally higher than they would have been in a non-competitive environment. Substantial guarantees were paid by the two exhibitors as a result of the competition; the competition also meant that the rental terms in the licenses for the three-city area were not adjustable.2/

Cobb and Consolidated became unhappy with the high film rental terms resulting from competition in the three-city area. In the Fall of 1983, they agreed to form a split in order to eliminate the competition that was causing the high film rental terms. The terms of the split agreement were that the two companies and their co-conspirators would:

2/ The general industry practice is that the rental terms in licenses awarded pursuant to competitive bidding and competitive negotiations are not, except in unusual circumstances, subject to adjustment after the picture plays. In other words, the terms in licenses awarded by bid or by competitive negotiation are considered to be "firm." By contrast, the rental terms on pictures licensed by negotiation are frequently subject to downward adjustment if the film performs below expectations.

(a) Split or allocate among themselves the rights to negotiate for motion picture licenses;

(b) Refrain from competitive bidding or competitive negotiations for motion picture licenses;

(c) Submit offers only for the exhibition of motion pictures at the theatres to which they had been split or allocated;

(d) Refrain from dealing with distributors with respect to motion pictures split or allocated to other participants in the conspiracy;

(e) Refrain from competing against each other for the licensing of motion pictures;

(f) Appoint Cobb as the booking agent 3/ for all first-run theatres in Birmingham and Tuscaloosa, Alabama, with the responsibility for booking motion pictures at the theatres in those two cities to which they had been split or allocated; and

(g) Appoint Consolidated as the booking agent for all first-run theatres in Huntsville, Alabama, with the responsibility for booking motion pictures at the theatres in Huntsville to which they had been split or allocated.

3/ A booking agent is a person who, acting as the agent for another person, obtains licenses for the exhibition of motion pictures by that other person.

As a result of the split agreement, competition for the licensing of motion pictures in the three-city area was eliminated. In particular, the split eliminated bidding and competitive negotiations for film licenses. The elimination of competition resulted in the exhibitors in the three-city area offering to distributors terms for film licenses that were lower than they would have been had the exhibitors continued to compete for licenses.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have agreed in a stipulation that the final judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The final judgment provides that there has been no admission by any party with respect to any issue. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(e), entry of this judgment is conditioned upon a determination by the Court that the judgment is in the public interest. The term of the final judgment is 10 years.

Section V of the final judgment prohibits Cobb from entering into any agreement with competitors anywhere in the United States to eliminate competition for motion picture licenses.

Section VI of the final judgment, enjoins Cobb, for a period of five years from the date of entry of the final judgment, from acting as a booking agent for a theatre owned, operated, or controlled by another exhibitor where that theatre is either within twenty miles of one of Cobb's theatres or within twenty miles of a theatre for which Cobb acts as the booking agent, unless Cobb obtains written permission to act as booking agent from the Assistant Attorney General in charge of the Antitrust Division. The twenty-mile standard used in Section VI is not intended in any way to imply that the Department of Justice believes that the appropriate geographic market for motion picture exhibition is an area with a diameter of twenty miles. The twenty-mile standard was chosen for administrative purposes and in the belief that it should generally cover most situations in which there would be reduced competition as a result of a booking arrangement between Cobb and another exhibitor. The determination of the size of the geographic market for film exhibition in a particular town or city depends on the analysis of a variety of factors. The twenty-mile standard used in Section VI is not a substitute, nor is it intended to be a substitute, for that analysis.

Section IV of the final judgment imposes certain additional obligations on Cobb. In the event of a sale of all or substantially all of Cobb's assets, Section IV(A) requires that

Cobb, as a condition of the sale, obtain an agreement by the acquiring party to be bound by the final judgment. Section IV(B) requires that the defendant provide written notice to the United States within thirty days of the effective date of any action whereby it (1) changes its name, (2) liquidates or otherwise ceases operations, (3) declares bankruptcy, or (4) is acquired by (or becomes a subsidiary of) another firm.

In order to ensure that defendant is complying with the provisions of the final judgment, Section VII(A) sets forth procedures under which representatives of the Department of Justice will be permitted to inspect and copy Cobb's documents and to interview its officers, employees, and agents. Section VII(B) requires Cobb to submit written reports upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

IV.

ALTERNATIVES CONSIDERED TO THE PROPOSED FINAL JUDGMENT

The United States considered no alternatives. Other than the booking prohibition in Section VI of the final judgment, the final judgment includes all the relief requested in the complaint and provides the same relief as obtained by the United States after fully litigating United States v. Capitol Service, Inc., 568 F. Supp. 134 (E.D. Wis. 1983).

V.

REMEDIES AVAILABLE TO PRIVATE PLAINTIFFS

Potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable remedies that they would have had were the final judgment not entered. Pursuant to Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), this judgment may not be used in private litigation as prima facie evidence of the defendant's violation of the federal antitrust laws, although a plea of guilty or a conviction in the accompanying criminal information could be so used.

VI.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

The final judgment is subject to a stipulation by the United States and the defendant that provides that the United States may withdraw its consent to the judgment at any time until the Court has found that entry of the judgment is in the public interest. By its terms, the final judgment provides for the Court's retention of jurisdiction in order, among other things, to permit the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b), any person wishing to comment on the final judgment may, for the sixty (60) day period prior to the effective date of the judgment, submit written comments to:

John W. Clark, Chief
Special Trial Section
Antitrust Division
Department of Justice
Washington, D.C. 20530

The comments, and the responses thereto, will be filed with the Court and published in the Federal Register. The Department of Justice will evaluate all comments and determine whether there is any reason for the withdrawal of its consent to the judgment.

VII.

DETERMINATIVE DOCUMENTS

Since there are no materials or documents that were determinative in formulating a proposal for the consent judgment, none are being filed by the United States. Section 2(b) of the Antitrust Procedures and Penalties Act requires that such documents, if there are any, be made available to the public for examination.

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