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UNITED STATES OF AMERICA

9
10 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11
12 UNITED STATES OF AMERICA,
Plaintiff,

13 v.

14 TRIBUNE PUBLISHING CO.,
15 Defendant.

Case No. 2:16-cv-01822

**PLAINTIFF'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

16
17 Plaintiff United States of America hereby applies *ex parte* to the Court
18 pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65-1 for a
19 Temporary Restraining Order enjoining Defendant Tribune Publishing Company
20 (“Tribune”), and all of its respective agents, employees, and attorneys, from

1 acquiring any portion of the assets of Freedom Communications, Inc., or in any
2 way taking control of or gaining access to the assets of Freedom Communications,
3 Inc. (“Freedom”) until the United States has had sufficient time to conduct
4 appropriate discovery in preparation for a preliminary injunction hearing and this
5 Court issues a ruling on its Order to Show Cause Why a Preliminary Injunction
6 Should Not Issue.

7 Counsel for the United States has advised counsel for Defendant Tribune of
8 the date and substance of this Application by telephone on March 16, 2016.
9 Defendant’s counsel informed the United States that Defendant opposes this
10 Application.

11 This application is made on the grounds set forth in the accompanying
12 Memorandum in Support; and exhibits attached thereto; all pleadings and papers
13 filed in this action; the argument of counsel; and further evidence as the Court may
14 consider at or before a hearing regarding this Application or the hearing regarding
15 the Order to Show Cause and preliminary injunction requested herein.

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17 Dated: March 17, 2016
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DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

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By: /s/ William H. Jones II
William H. Jones II

Attorney for the United States of America

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15 TRIBUNE PUBLISHING CO.,
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**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

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1 **INTRODUCTION**

2 The United States moves for an order temporarily enjoining Tribune
3 Publishing Company (“Tribune”), owner of the *Los Angeles Times*, from finalizing
4 its acquisition of Freedom Communications, Inc. (“Freedom”) and its publications,
5 the Orange County *Register* and the Riverside County *Press-Enterprise*. Tribune
6 and Freedom compete today for newspaper readers and advertisers in Orange
7 County and Riverside County. The proposed acquisition would immediately end
8 that competition and leave Tribune with a monopoly in daily newspaper in these
9 counties. This is prohibited by Section 7 of the Clayton Act, 15 U.S.C. § 18.

10 Tribune was the winning bidder for Freedom’s assets in a bankruptcy
11 auction held March 16, 2016 and is scheduled to seek bankruptcy court approval of
12 its acquisition on March 21, 2016. At least two bidders other than Tribune
13 submitted bids for Freedom and its newspaper assets but, unlike Tribune, neither of
14 the alternative bidders for Freedom would threaten competition in Orange County
15 or Riverside County. The United States notified Freedom and Tribune before the
16 auction that awarding the bid to Tribune would raise serious antitrust issues that
17 did not exist with the other reported bidders. *See* Ex. A, Letter from William Baer
18 to Alan Friedman (Mar. 14, 2016).

19 The United States filed a complaint challenging Tribune’s acquisition as a
20 violation of Section 7 of the Clayton Act because this acquisition would be likely

1 to “substantially lessen competition, or tend to create a monopoly” in daily
2 newspapers in Orange and Riverside Counties. 15 U.S.C. § 18. The United States
3 will be prepared to address the full merits of its claim in due course and after
4 reasonable discovery. But in order to preserve the status quo of competition
5 between Tribune and Freedom, the United States applies to this Court, pursuant to
6 15 U.S.C. §§ 4 and 25 and Federal Rule of Civil Procedure 65, for a temporary
7 restraining order. Without such an order, Tribune will take control of the *Register*
8 and *Press-Enterprise* newspapers, immediately harming consumers through this
9 lost competition. Tribune could also begin to integrate its newly acquired assets
10 into those of the *Los Angeles Times* and take actions at odds with preserving a
11 competitive marketplace, including accessing Freedom’s confidential competitive
12 information, firing employees, and shuttering operations. These actions would
13 irreparably damage the ability of those newspapers to compete independently,
14 harm consumers in the market, and deny this Court the opportunity to consider the
15 merits of the United States’ claim.

16 Tribune understood that the acquisition of its closest competing newspapers
17 in Orange and Riverside Counties raised antitrust concerns and it engaged antitrust
18 counsel and antitrust economists since at least January. But Tribune chose not to
19 approach the United States concerning its plan to bid for Freedom’s assets, to share
20 its views on the antitrust implications of the acquisition, or to allow the United

1 States to investigate the deal ahead of time. By not previously disclosing the
2 acquisition, Tribune ensured that the United States would discover its long planned
3 acquisition only around the time of the bankruptcy auction. The United States
4 seeks a pause in the process to allow it to obtain discovery and to prepare to
5 present the merits of its claims to the Court. Any time pressures Tribune faces as a
6 result of the United States' intervention at this point are of its own making.

7 Therefore, in order to preserve the status quo, the United States applies to
8 this Court, pursuant to 15 U.S.C. §§ 4 and 25 and Federal Rule of Civil Procedure
9 65, for a temporary restraining order enjoining Tribune from finalizing its
10 acquisition of Freedom or in any way taking control of or gaining access to
11 Freedom's assets until the United States has had sufficient time to conduct
12 appropriate discovery in preparation for preliminary injunction hearing and this
13 Court issues a ruling on its Order to Show Cause Why a Preliminary Injunction
14 Should Not Issue.

15 **BACKGROUND**

16 Tribune is a major media company headquartered in Chicago, Illinois. It
17 publishes major newspapers across California, Illinois, Florida, Maryland,
18 Connecticut, Virginia, and Pennsylvania. In southern California, its newspapers
19 include, among others, the *Los Angeles Times* and *San Diego Union-Tribune*.

20 Freedom is a privately owned media company headquartered in Santa Ana,

1 California. Freedom owns the Orange County *Register* and the Riverside *Press-*
2 *Enterprise*.

3 On November 1, 2015, Freedom filed for Chapter 11 bankruptcy in the
4 Central District of California. Bids for Freedom's assets were submitted on March
5 11, 2016. At least two bidders other than Tribune submitted bids for Freedom and
6 its newspaper assets. Unlike Tribune, neither of the alternative bidders for
7 Freedom would significantly threaten competition in Orange County or Riverside
8 County. On March 16, 2016, an auction for Freedom's assets was held. Tribune
9 won the auction for a purchase price of \$56 million. Tribune's purchase of
10 Freedom's assets is subject to final bankruptcy court approval in the United States
11 Bankruptcy Court for the Central District of California on March 21, 2016.
12 Tribune may close the transaction if it obtains bankruptcy court approval.¹

13 If Tribune succeeds in buying Freedom's assets, it will own each of the four
14 most highly circulated newspapers from Los Angeles to San Diego and will hold a
15 monopoly in Orange County and Riverside County.

16 Plaintiff United States only recently became aware of Tribune's efforts to
17 acquire Freedom. As a result, Plaintiff has thus far obtained only a fraction of the
18

19 ¹ The potential sale of Freedom to Tribune does not meet the threshold
20 requirements for reporting under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a,
which would have prohibited the transaction from closing until the United States
had an opportunity to investigate.

1 information typically provided as part of a standard merger review process and
2 must obtain reasonable discovery before presenting the merits of its claims to this
3 Court at a preliminary injunction hearing.

4 **A. Local Daily Newspapers in Orange County, California**

5 Tribune's *Los Angeles Times* and Freedom's *Register* each serve Orange
6 County, California. They are the leading newspapers by circulation in Orange
7 County and each other's primary competitors in the sale of English-language local
8 daily newspapers to readers and in the sale of advertising in English-language local
9 daily newspapers. The *Los Angeles Times* and the *Register* are the only English-
10 language local newspapers with significant circulation, together making up over 98
11 percent of daily newspaper circulation in Orange County. *See* Ex. B, Decl. of
12 Robin Allen, ¶ 7.

13 If Tribune acquires the *Register*, it would obtain a monopoly in local daily
14 newspapers in Orange County. Thus, competition for readers of English-language
15 local daily newspapers in Orange County would be substantially reduced or
16 eliminated and newspaper readers in Orange County would be likely to pay higher
17 prices and receive lower levels of quality and service. Likewise, the acquisition
18 would substantially reduce or eliminate competition for local advertising in
19 English-language local daily newspapers in Orange County, and local advertisers
20 would be likely to pay higher prices and to receive lower levels of quality and

1 service for their advertisements.

2 **B. Local Daily Newspapers in Riverside County, California**

3 Tribune's *Los Angeles Times* and *San Diego Union-Tribune*, as well as
4 Freedom's *Press-Enterprise* and *Register* each serve Riverside County. Tribune
5 today accounts for about 12 percent of the daily newspaper circulation in Riverside
6 County, with about 10 percent through the *Los Angeles Times* and about 1.5
7 percent through the *San-Diego Union-Tribune*. Freedom accounts for about 67
8 percent of the daily newspaper circulation in Riverside County, with about 39
9 percent through the *Press-Enterprise* and about 28 percent through the *Register*.
10 Following Tribune's acquisition of Freedom, its share of circulation in Riverside
11 County will grow to over 81 percent. Following the proposed merger, the only
12 other English-language local newspaper with significant circulation in Riverside
13 County will be the *Desert Sun*, which targets the Palm Spring area in Riverside
14 County. *See* Ex. B, ¶¶ 8, 11-12.

15 If Tribune acquires Freedom, along with its *Press-Enterprise* and *Register*
16 newspapers, it would obtain a monopoly in newspapers in Riverside County.
17 Thus, competition for readers of English-language local daily newspapers in
18 Riverside County would be substantially reduced or eliminated and newspaper
19 readers in Riverside County would be likely to pay higher prices and receive lower
20 levels of quality and service. Likewise, the acquisition would also substantially

1 reduce or eliminate competition for local advertising in English-language local
2 daily newspapers in Riverside County, and local advertisers would be likely to pay
3 higher prices and to receive lower levels of quality and service for their
4 advertisements.

5 ARGUMENT

6 If not preliminarily enjoined, Tribune’s proposed acquisition of Freedom
7 would eliminate both long-standing competition and the ability of the United States
8 and the Court to rectify the loss of that competition. Congress has authorized
9 preliminary relief in antitrust cases by including in both the Sherman Act and the
10 Clayton Act a provision stating that “the court may at any time make such
11 temporary restraining order or prohibition as shall be deemed just in the premises.”
12 15 U.S.C. §§ 4, 25. “Consequently, it is the duty of the District Court before
13 which an antitrust suit is pending to pass on the desirability of temporary relief in
14 order to avoid later problems of ‘unscrambling,’” *California v. Federal Power*
15 *Comm’n*, 369 U.S. 482, 495 (1962). If not enjoined, Tribune could immediately
16 absorb Freedom’s assets and engage in the “scrambling” the statute seeks to avoid
17 by, for example, accessing Freedom’s competitively sensitive information, firing
18 redundant employees, shuttering facilities, selling equipment, and harming its
19 ability to independently compete.

20 TROs “preserve the status quo pending a hearing.” *Hoffman v. Int’l*

1 *Longshoremen's & Warehousemen's Union, Local No. 10*, 492 F.2d 929, 933 (9th
2 Cir. 1974), *aff'd sub nom. Muniz v. Hoffman*, 422 U.S. 454 (1975). That is all the
3 United States seeks here – the maintenance of ongoing competition among long-
4 standing competitors while both sides conduct the necessary preparations for a
5 hearing on the merits of the United States' antitrust claims.

6 A motion for a TRO or preliminary injunction requires the Court to make
7 four findings with respect to the United States as the moving party: that “(1) it is
8 likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the
9 absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an
10 injunction is in the public interest.” *Pom Wonderful LLC v. Hubbard*, 775 F.3d
11 1118, 1124 (9th Cir. 2014) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555
12 U.S. 7, 20 (2008)). Here, all four conditions are met and support the preliminary
13 relief requested by the United States.

14 **A. The United States Is Likely to Succeed on the Merits**

15 Tribune's proposed acquisition of Freedom, including its newspapers the
16 Orange County *Register* and Riverside *Press-Enterprise*, violates Section 7 of the
17 Clayton Act, 15 U.S.C. § 18, because it would create monopolies in local daily
18 newspapers in Orange County and Riverside County. If the merger is allowed, it
19 would eliminate competition between Tribune and Freedom and result in Tribune
20 controlling 98 percent of daily newspaper circulation in Orange County and 81

1 percent in Riverside County.² See Ex. B, ¶¶ 7, 11, 12.

2 Section 7 prohibits mergers when the effect of a transaction “may be
3 substantially to lessen competition, or to tend to create a monopoly.” 15 U.S.C. §
4 18. Because of the statutory language “may be,” Section 7 analysis is based on
5 “probabilities, not certainties.” *Brown Shoe Co. v. United States*, 370 U.S. 294,
6 323 (1962); see also *United States v. Penn-Olin Chem. Co.*, 378 U.S. 158, 171
7 (1964) (Section 7 “requirements . . . are satisfied when a ‘tendency’ toward
8 monopoly or the ‘reasonable likelihood’ of a substantial lessening of competition
9 in the relevant market is shown”); *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156,
10 1160 (9th Cir. 1984) (“It is well established that a section 7 violation is proven
11 upon a showing of reasonable probability of anticompetitive effect.”).

12 In determining whether a particular acquisition may substantially lessen
13 competition, courts typically identify (1) lines of commerce or “product markets”
14 in which competition may be affected and (2) the areas of the country or
15 geographic markets in which an anticompetitive effect of the merger would be felt.
16 If the transaction is likely to substantially reduce competition in a relevant market,
17

18 ² Courts infer monopoly power from a company controlling a “predominant share
19 of the market,” *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966), and the
20 Supreme Court has found firms controlling shares lower than what Tribune would
hold in Riverside County to be monopolists. See *Eastman Kodak Co. v. Image
Technical Servs., Inc.*, 504 U.S. 451, 481 (1992) (80%); *United States v. E.I. du
Pont de Nemours & Co.*, 351 U.S. 377, 379, 391 (1956) (75%).

1 the merger should be blocked. *See United States v. Marine Bancorporation, Inc.*,
2 418 U.S. 602, 618-23 (1974). But “[w]here a merger is of such a size as to be
3 inherently suspect, elaborate proof of market structure, market behavior and
4 probable anticompetitive effects may be dispensed with in view of § 7’s design to
5 prevent undue concentration.” *United States v. Cont’l Can Co.*, 378 U.S. 441, 458
6 (1964); *see also United States v. Times Mirror Co.*, 274 F. Supp. 606, 618 (C.D.
7 Cal. 1967) (“Finally, when a merger such as here results in a share of from 10.6%
8 [t]o 54.8% [o]f total weekday circulation, from 23.9% [t]o 99.5% [o]f total
9 morning circulation and from 20.3% [t]o 64.3% [o]f total Sunday circulation in the
10 relevant geographic market, the acquisition constitutes a prima facie violation of
11 the Clayton Act.”).

12 1. The Sale of English-Language Local Daily Newspapers and the Sale
13 of Local Advertising in English-Language Local Daily Newspaper,
14 are Each A Relevant Product Market

15 Tribune’s acquisition of Freedom harms competition in the relevant product
16 markets for the sale of Daily English-language local daily newspapers to
17 subscribers and the sale of local advertising in those newspapers. *See Ex. B, ¶ 9.*

18 The relevant product market establishes the boundaries within which
19 competition meaningfully exists. Those “commodities reasonably interchangeable
20 by consumers for the same purposes” constitute a product market for antitrust
purposes. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395

1 (1956). As the Supreme Court has recognized, the market “must be drawn
2 narrowly to exclude any other product to which, within reasonable variations in
3 price, only a limited number of buyers will turn.” *Times-Picayune Publ’g Co. v.*
4 *United States*, 345 U.S. 594, 612 n.31 (1953); *see also Brown Shoe*, 370 U.S. at
5 325 (noting that product markets are delineated “by the reasonable
6 interchangeability of use or the cross-elasticity of demand between the product
7 itself and substitutes for it”).

8 Local daily newspapers sell two products (services) to two sets of customers.
9 To readers, they sell daily newspapers. To local advertisers, they sell access to
10 their readers. Each of these products constitutes a line of commerce and a relevant
11 product market within the meaning of Section 7 of the Clayton Act. As the
12 Supreme Court has held, daily newspapers compete in both of these distinct
13 markets: “every newspaper is a dual trader in separate though interdependent
14 markets; it sells the newspaper’s news and advertising content to its readers; in
15 effect that readership is in turn sold to the buyers of advertising space.” *Times-*
16 *Picayune*, 345 U.S. at 610. In *Community Publishers, Inc. v. Donrey Corp.*, 892 F.
17 Supp. 1146, 1155, 1157 (W.D. Ark. 1995), *aff’d*, 139 F.3d 1180 (8th Cir. 1998),
18 the court held that the “vast weight of authority” supported the finding that “the
19 relevant product market for antitrust purposes is the daily local newspaper,” which
20 “is in fact two markets: one for readers and one for advertisers.” *See id.*

1 (collecting cases). The United States proved these markets in the *Community*
2 *Publishers* case, and has prevailed on these market definitions in two cases
3 affirmed by the Supreme Court. *United States v. Citizen Publ'g Co.*, 280 F. Supp.
4 978, 984-92 (D. Ariz. 1968), *aff'd*, 394 U.S. 131 (1969); *United States v. Times*
5 *Mirror Co.*, 274 F. Supp. 606, 614-19 (C.D. Cal. 1967), *aff'd*, 390 U.S. 712 (1968).

6 Most English-speaking readers would not consider daily newspapers
7 published in other languages as good substitutes for daily newspapers published in
8 English. Likewise, many advertisers would not consider daily newspapers
9 published in other languages as good substitutes for daily newspapers published in
10 English.

11 Thus, the sale of English-language local daily newspapers to subscribers and
12 the sale of local advertising in those newspapers are relevant product markets and
13 lines of commerce within the meaning of Section 7 of the Clayton Act.

14 2. Orange County and Riverside County Are Relevant Geographic 15 Markets

16 Tribune's acquisition of Freedom's *Register* newspaper harms competition
17 in the relevant geographic market of Orange County and Tribune's acquisition of
18 Freedom's *Press-Enterprise* newspaper harms competition in the relevant
19 geographic market of Riverside County. *See* Ex. B, ¶ 10.

20 A relevant geographic market is an "area in which the seller operates, and to
which the purchaser can practicably turn for supplies." *United States v. Phila.*

1 *Nat'l Bank*, 374 U.S. 321, 359 (1963) (internal quotation marks and emphasis
2 omitted). If consumers in a given geographic area do not consider products from
3 outside that area to be reasonable, practical alternatives, then that geographic area
4 is a relevant geographic market.

5 The *Los Angeles Times* and the *Orange County Register* are produced,
6 published, and distributed to readers in or near Orange County, California. Both
7 newspapers provide news relating to Orange County, in addition to state, national,
8 and international news. Apart from the *Los Angeles Times*, English-language local
9 daily newspapers that serve areas outside of Orange County likely do not regularly
10 provide local news specific to that county, nor do they have any significant
11 circulation or sales inside Orange County.

12 Likewise, the *Los Angeles Times* and the *Riverside Press-Enterprise* are
13 produced, published, and distributed to readers in or near Riverside County,
14 California, and both newspapers provide news relating to Riverside County, in
15 addition to state, national, and international news. Apart from the *Los Angeles*
16 *Times* and the *Register*, English-language local daily newspapers that serve areas
17 outside of Riverside County likely do not regularly provide local news specific to
18 those counties, nor do they have any significant circulation or sales inside
19 Riverside County.

20 Accordingly, Orange County, California and Riverside County, California

1 are relevant geographic markets within the meaning of Section 7 of the Clayton
2 Act.

3 3. Tribune's Acquisition of the *Register* and *Press-Enterprise* Is Likely
4 to Lessen Competition Substantially and Tend to Create a Monopoly

5 The Supreme Court instructs that “a merger which produces a firm
6 controlling an undue percentage share of the relevant market, and results in a
7 significant increase in the concentration of firms in that market is so inherently
8 likely to lessen competition substantially that it must be enjoined in the absence of
9 evidence clearly showing that the merger is not likely to have such anticompetitive
10 effects.” *Philadelphia National Bank*, 374 U.S. at 363; *see also id.* at 364
11 (“Without attempting to specify the smallest market share which would still be
12 considered to threaten undue concentration, we are clear that 30% presents that
13 threat.”); *United States v. Bazaarvoice, Inc.*, No. 13-cv-00133-WHO, 2014 WL
14 203966, at *68-70 (N.D. Cal. Jan. 8, 2014) (finding that “the government
15 established that the combined market shares of [the merging parties] far exceeds 30
16 percent, and is in excess of 50 percent,” which “easily made a prima facie showing
17 of a Section 7 violation”).

18 In Orange County, Tribune's acquisition of the *Register* will increase its
19 control of local daily newspaper circulation from 41 percent to 98 percent. In
20 Riverside County, Tribune's acquisition of the *Press-Enterprise* and *Register*
would increase Tribune's share of local daily newspapers from 12 percent to over

1 81 percent.

2 While entry by new firms or expansion by existing firms can in some
3 circumstances defeat an acquisition's anticompetitive effects, it only does so when
4 the entry or expansion will "fill the competitive void that will result if defendants
5 are permitted to purchase their acquisition target." *United States v. H&R Block*
6 *Inc.*, 833 F. Supp. 2d 36, 73 (D.D.C. 2011) (internal quotation marks and
7 alterations omitted). Entry into the English-language local daily newspaper
8 markets in Orange County and Riverside County would not be timely, likely, or
9 sufficient to prevent the harm to competition resulting from Tribune's acquisition
10 of Freedom's assets. Nor would expansion of English-language daily newspapers
11 in areas adjacent to Orange County and Riverside County be timely, likely, or
12 sufficient to prevent the harm to competition resulting from Tribune's acquisition
13 of Freedom's assets. English-language daily newspapers in areas adjacent to
14 Orange County and Riverside County do not regularly provide local news specific
15 to Orange County and Riverside County. Expanding into Orange County and
16 Riverside County would require English-language daily newspapers in adjacent
17 areas to expand their coverage of local news specific to Orange County and
18 Riverside County, attract local advertisers who target readers in those counties, and
19 expand their distribution into those counties. No English-language daily
20 newspapers in areas adjacent to Orange County and Riverside County are likely to

1 expand sufficiently into Orange County or Riverside County to prevent harm from
2 Tribune's acquisition of Freedom.

3 The significant increase in the concentration in local daily newspaper
4 circulation in the Orange County and Riverside County markets, eliminating nearly
5 all competition in those markets, firmly establishes a prima facie case and a
6 likelihood of success on the merits.

7 **B. The Public is Likely to Suffer Irreparable Harm in the Absence of**
8 **Preliminary Relief**

9 "In a Government case the proof of the violation of law may itself establish
10 sufficient public injury to warrant relief." *California v. Am. Stores Co.*, 495 U.S.
11 271, 295 (1990); *see also United States v. Siemens Corp.*, 621 F.2d 499, 506 (2d
12 Cir. 1980) ("[O]nce the United States demonstrates a reasonable probability that
13 § 7 has been violated, irreparable harm to the public should be presumed."); *United*
14 *States v. Ingersoll-Rand Co.*, 218 F. Supp. 530, 544 (W.D. Pa. 1963) ("The
15 Congressional pronouncement in § 7 embodies the irreparable injury of violations
16 of its provisions.").

17 Even if irreparable injury were not presumed, serious and permanent harm to
18 competition will occur if Tribune is allowed to proceed with its acquisition and
19 integration of the *Register* and *Press-Enterprise*. Following consummation of the
20 merger, consumers would be harmed by the lost competition between the
newspapers. Tribune would also take steps that could be difficult to unwind later.

1 It would have access to competitively sensitive information from the *Register* and
2 *Press-Enterprise*, such as prices paid by their top advertisers and information about
3 prices subscribers pay. It could also start shuttering assets, such as firing
4 employees or shutting down and selling facilities and equipment. *See FTC v.*
5 *Staples, Inc.*, 970 F. Supp. 1066, 1091 (D.D.C. 1997) (“Without an injunction,
6 consumers in the . . . markets where superstore competition would be eliminated or
7 significantly reduced face the prospect of higher prices than they would have
8 absent the merger.”); *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261
9 (2d Cir. 1989) (irreparable harm established where merged firm would “dominate”
10 the market and the acquired firms “would cease to be viable competitors in the
11 market”); *F&M Schaefer Corp. v. C. Schmidt & Sons, Inc.*, 597 F.2d 814, 818 (2d
12 Cir. 1979) (finding irreparable harm because acquisition would allow defendant
13 immediately to “have access to the confidential trade information of one of its
14 leading competitors” and lead to the “risk of decreased organizational morale” of
15 the acquired firm).

16 If a TRO is not issued, it would not only cause substantial harm to
17 competition, it would undermine this Court’s ability to order an adequate and
18 effective remedy if the United States prevails on its claims. *See, e.g., FTC v.*
19 *Swedish Match N. Am., Inc.*, 131 F. Supp. 2d 151, 173 (D.D.C. 2000) (noting that
20 the “absence of an injunction will also make it impossible to accomplish full

1 relief”); *United States v. Ivaco, Inc.*, 704 F. Supp. 1409, 1429 (W.D. Mich. 1989)
2 (“If an injunction is denied and the transaction is later found to violate the Act,
3 then the remedy would be a divestiture of acquired assets” but “[t]hat remedy is
4 typically rejected by the courts as ineffective,” as it “would not effectively remedy
5 the injury to competition threatened by this transaction.”); *Christian Schmidt*
6 *Brewing Co. v. G. Heileman Brewing Co.*, 600 F. Supp. 1326, 1332 (E.D. Mich.
7 1985) (“If preliminary relief is not awarded and the merger is subsequently found
8 to be unlawful, it would be extremely difficult, if at all possible, to remedy
9 effectively the unlawful merger.”); *Consol. Gold Fields, PLC v. Anglo Am. Corp.*
10 *of S. Afr. Ltd.*, 698 F. Supp. 487, 503 (S.D.N.Y. 1988) (“Once a [merger] has been
11 consummated, it becomes virtually impossible to ‘unscramble the eggs.’” (quoting
12 *Christian Schmidt Brewing Co.*, 600 F. Supp. at 1332)), *aff’d in part, rev’d in part*
13 *on other grounds*, 871 F.2d 252, 261 (2d Cir. 1989) (stating that a preliminary
14 junction is the “remedy of choice” for an unlawful merger). *See also* IVA Phillip
15 E. Areeda and Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust*
16 *Principles and Their Application* ¶ 990c1 (2006) (“Of all the forms of equitable
17 relief a simple injunction prior to consummation of the merger transaction is the
18 least disruptive to all concerned. Any competitive injuries that might result from
19 the merger have not yet occurred.”).

20

1 **C. Preliminary Relief Will Not Impose an Undue Burden on Tribune**

2 This motion for a TRO merely seeks maintenance of the status quo as the
3 Tribune and Freedom newspapers continue their current competing operations for
4 a limited time. Tribune will not suffer any significant harm if the acquisition is
5 enjoined temporarily, other than whatever private benefits it could achieve through
6 closing the agreement quickly. Freedom already has financing to continue
7 operating through the end of March and any potential private harm to Freedom or
8 its creditors is limited since Freedom's assets can be sold to either of the other
9 bidders in the bankruptcy auction. Because a TRO would impose no meaningful
10 burden on Tribune, the significant public interest in preserving competition in the
11 local daily newspaper markets in Orange County and Riverside County must
12 prevail. *See, e.g., Ivaco*, 704 F. Supp. at 1430 (“This private, financial harm must,
13 however, yield to the public interest in maintaining effective competition.”);
14 *United States v. Columbia Pictures Indus., Inc.*, 507 F. Supp. 412, 434 (S.D.N.Y.
15 1980) (“Far more important than the interests of either the defendants or the
16 existing industry . . . is the public's interest in enforcement of the antitrust laws and
17 in the preservation of competition. The public interest is not easily outweighed by
18 private interests.”); *United States v. Siemens Corp.*, 621 F.2d 499, 506 (2d Cir.
19 1980) (in Section 7 cases brought by the Government, “private interests must be
20 subordinated to public ones”); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 727 n.25

1 (D.C. Cir. 2001).

2 Moreover, both Tribune and Freedom were well aware before the auction
3 that awarding the bid to Tribune would raise serious antitrust issues and likely
4 result in this litigation. *See Ex. A.*

5 **D. Preliminary Relief Advances the Public Interest**

6 Preserving the status quo by maintaining the *Los Angeles Times* as a separate
7 competitor from the Orange County *Register* and Riverside *Press-Enterprise*, and
8 thereby preserving competition in those markets, exemplifies preliminary relief
9 that is in the public interest. “By enacting Section 7, Congress declared that the
10 preservation of competition is always in the public interest.” *Ivaco*, 704 F. Supp.
11 at 1430. *See also Swedish Match*, 131 F. Supp. 2d at 173 (“There is a strong public
12 interest in effective enforcement of the antitrust laws”); *Heinz*, 246 F.3d at
13 726 (“The principal public equity weighing in favor of issuance of preliminary
14 injunctive relief is the public interest in effective enforcement of the antitrust
15 laws”); *Marathon Oil Co. v. Mobil Corp.*, 530 F. Supp. 315, 320 (N.D. Ohio 1981)
16 (“[T]he mere possibility that Marathon would be eliminated as an effective
17 competitor from the marketplace is sufficient to satisfy the public interest
18 criterion.”). Relief is necessary to protect the public interest in preserving
19 competition.

1 **CONCLUSION**

2 For the reasons set forth above, the United States respectfully requests that
3 this Court issue a temporary restraining order enjoining Tribune from finalizing its
4 acquisition of Freedom or in any way taking control of or gaining access to
5 Freedom's assets until the United States has had sufficient time to conduct
6 appropriate discovery in preparation for a preliminary injunction hearing and this
7 Court issues a ruling on its Order to Show Cause Why a Preliminary Injunction
8 Should Not Issue.

9
10 Dated: March 17, 2016

11 DEPARTMENT OF JUSTICE
12 ANTITRUST DIVISION

13 By: /s/ William H. Jones II
14 William H. Jones II

15 Attorney for the United States of America
16
17
18
19
20

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Washington, D.C. 20001

6 Telephone: 202-514-0230

Facsimile: 202-514-7308

7 Counsel for Plaintiff,

8 UNITED STATES OF AMERICA

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,
Plaintiff,

12 v.

13 TRIBUNE PUBLISHING CO.,
14 Defendant.

Case No. 2:16-cv-01822

**NOTICE TO COUNSEL OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

15
16 **NOTICE TO COUNSEL**

17 Pursuant to local rules, counsel for Plaintiff United States of America
18 contacted counsel for Defendant Tribune Publishing Co. (“Tribune”) to give notice
19 of Plaintiff’s ex parte application as follows:
20

1 On Wednesday, March 16, 2016, at approximately 5 PM PDT, counsel for
2 Plaintiff contacted William Blumenthal, counsel for Tribune, at (202) 736-8030 to
3 advise him of the ex parte application. Mr. Blumenthal indicated that he opposed
4 the application.

5
6 Dated: March 17, 2016

7 DEPARTMENT OF JUSTICE
8 ANTITRUST DIVISION

9 By: /s/ William H. Jones II
10 William H. Jones II

11 Attorney for the United States of America
12
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17
18
19
20

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused a true and correct copy of Plaintiff's
3 Application for Temporary Restraining Order and Order to Show Cause, including
4 supporting memoranda, exhibits, and proposed order, to be served via hand
5 delivery and e-mail to the following counsel for Defendant, who has agreed to
6 accept service on behalf of Defendant:

7 William Blumenthal
8 Sidley Austin LLP
9 1501 K Street, NW
10 Washington, DC 20005
11 (202) 736-8030
12 wblumenthal@sidley.com
13 *Counsel for Tribune Publishing Co.*

14 Dated: March 17, 2016

15 DEPARTMENT OF JUSTICE
16 ANTITRUST DIVISION

17 By: /s/ William H. Jones II
18 William H. Jones II

19 Attorney for the United States of America
20

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7
8 Counsel for Plaintiff,
UNITED STATES OF AMERICA

9
10 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11
12 UNITED STATES OF AMERICA,
Plaintiff,

13 v.

14 TRIBUNE PUBLISHING CO.,
15 Defendant.

Case No. 2:16-cv-01822

**[PROPOSED] TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

16
17 The Court has considered Plaintiff United States' Ex Parte Application for a
18 Temporary Restraining Order and an Order to Show Cause Why a Preliminary
19 Injunction Should Not Issue, and the Declaration and Memorandum in support
20 thereof.

1 IT IS HEREBY ORDERED that pending time to allow appropriate
2 discovery and a full hearing for determination of the Order to Show Cause Why a
3 Preliminary Injunction Should Not Issue, Defendant Tribune Publishing Co., and
4 all of its respective agents, employees, or attorneys, shall be and hereby are
5 restrained and enjoined from acquiring any portion of the assets of Freedom
6 Communications, Inc., or in any way taking control of or gaining access to the
7 assets of Freedom Communications, Inc.

8 IT IS FURTHER ORDERED that the parties shall appear at _____ a.m./p.m.
9 on _____, 2016, before the Honorable _____
10 in Courtroom _____ located at _____ to
11 discuss an appropriate schedule for discovery, briefing, and a hearing to show
12 cause why Defendant Tribune Publishing Co., and all of its respective agents,
13 employees, or attorneys, should not be preliminarily enjoined from acquiring any
14 portion of the assets of Freedom Communications, Inc., or in any way taking
15 control of or gaining access to the assets of Freedom Communications, Inc.

16 **IT IS SO ORDERED.**

17 DATED: March __, 2016

18 _____
The Hon. _____
United States District Judge

Exhibit A



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

WILLIAM J. BAER
Assistant Attorney General

RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202)514-2401 / (202)616-2645 (Fax)

March 14, 2016

VIA E-MAIL

Alan J. Friedman, Esq.
Lobel, Weiland, Golden, and Friedman LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92629

Re: Tribune Publishing Company's Bid to Acquire
Freedom Communications, Inc.

Dear Mr. Friedman:

I understand that you have previously spoken with Bill Jones of our Litigation III Section and that he has informed you of our ongoing investigation relating to the sale of the assets of Freedom Communications, Inc. ("Freedom"). We appreciate your efforts to provide Bill and his team with information that the Antitrust Division of the United States Department of Justice ("the Division") needs from Freedom in order to evaluate the likely competitive effects of the sale of these assets. Given the auction that will be occurring on March 16, 2016, we felt it important to communicate to you our current assessment from a competition perspective of the bidders that we understand may be interested in acquiring the Freedom assets. In particular, we wish to inform you that, based on our review to date, the Division believes that the acquisition of the Freedom assets by Tribune Publishing Company ("Tribune") poses a serious risk of harming newspaper readers and advertisers in Orange County and Riverside County. If Freedom selects Tribune as its purchaser, the Division will exercise its antitrust law enforcement responsibilities to ensure that the transaction does not deprive newspaper readers and advertisers in these areas of the benefits of competition. Based on its review to date, the Division does not have the same concerns with the acquisition of Freedom by either of the other entities that have been reported to have submitted bids.

Alan J. Friedman, Esq.
March 14, 2016
Page 2

Please do not hesitate to contact Bill or his Chief, David Kully, should you have any questions concerning the substance of our current assessment.

Sincerely,



William J. Baer

cc: William Blumenthal, Esq., Sidley Austin, LLP
Thomas B. Walper, Esq., Munger, Tolles & Olsen LLP
William J. Kolasky, Esq., Hughes, Hubbard & Reed LLP

1 Antitrust Division, I have analyzed a large number of proposed mergers in a large
2 number of industries.

3 3. I graduated cum laude from the University of Illinois at Urbana-
4 Champaign in 1979, and received a Ph.D. in economics from Northwestern
5 University in 1984, where I received a Sloan Foundation dissertation fellowship. I
6 have provided expert testimony in two matters –the U.S.D.A. Marketing Order
7 Hearing on Hops (1984) and United States v. Rockford Memorial (1988). I have
8 published journal articles and chapters in books on competition economics. In
9 addition, I have spoken at conferences related to the economics of the health care
10 and electric power industries. In 1986-1987, I was a Kramer Fellow at the
11 University of Chicago.

12 4. My review of this matter began on March 11, 2016 and is ongoing.
13 As part of my work, I have looked at the limited amount of documents and data
14 provided by Tribune, Freedom, and Digital First Media, another newspaper owner
15 with newspapers in the Los Angeles area. I have also reviewed industry data
16 compiled by nonparties who track the newspaper industry, the websites of Tribune
17 and Freedom, and publicly available information about prior newspapers cases. I
18 have also considered statements made by counsel for Tribune and economists
19 employed by Tribune. The amount of information available for my evaluation is
20 considerably less than the information available to me in a typical merger
investigation because we became aware of this proposed acquisition only recently
and we have not had an opportunity to conduct a thorough investigation. I will
continue to review material as it becomes available to me.

1 5. Notwithstanding the relative lack of comprehensive data and
2 information, I have employed some of the same tools and methods that I use in my
3 regular work as an economist at the Antitrust Division to evaluate the potential
4 effects of the proposed acquisition.

5 6. The proposed acquisition would merge the Orange County *Register*
6 and the Riverside *Press-Enterprise* into the same company with the *Los Angeles*
7 *Times*. Based on my review to date, it is likely that this combination would be a
8 merger of the only two local daily newspapers published in English that have
9 significant newspaper sales (known in the industry as circulation) in Orange
10 County. The acquisition would also merge into one company three of the highest
11 circulation English-language newspapers in Riverside County.

12 7. As part of my work, I assessed the most recent newspaper circulation
13 data compiled and published by Kantar Media, a firm that reports advertising reach
14 of newspapers. Newspaper publishers report these data to Kantar. The data are
15 used to show advertisers the circulation numbers and circulation areas of the
16 newspapers in which advertisers purchase or consider purchasing ads. The data
17 can be sorted by geography. Looking at the data for Orange County shows that the
18 leading circulation newspaper is the Orange County *Register*. The second leading
19 daily newspaper is the *Los Angeles Times*. Together, the two newspapers combine
20 for 98% of the sales of English-language daily newspaper sales in Orange County.

 8. The data show a similar situation for Riverside County. In Riverside
County, the data show Freedom's newspapers that circulate in the county, the
Riverside Press-Enterprise and the Orange County *Register*, and Tribune's

1 newspapers, the *Los Angeles Times* and the *San Diego Union-Tribune*, collectively
2 represent 81% of all the newspapers in English that circulate in Riverside County.
3 The vast majority of the remaining English-language newspapers are sales of the
4 *Palm Springs Desert Sun*. If allowed, this acquisition would give Tribune control
5 over almost all of the English language newspaper sales in Orange County and the
6 vast majority of sales in Riverside County.

6 9. I assessed product and geographic markets the acquisition may affect.
7 Based on my review of the limited information available, it is likely that the
8 proposed merger implicates at least two product markets. First, it is likely that
9 sales to readers of local daily English-language newspapers is a relevant product
10 market. When defining product markets, I look to Section 4 of the FTC-DOJ 2010
11 Horizontal Merger Guidelines, methodology for analyzing mergers that is
12 frequently used by courts in considering the risks to competition posed by a
13 merger. Under the Merger Guidelines, market definition focuses on customers'
14 ability and willingness to substitute away from one product to another because of a
15 price increase or a reduction in product quality or service. Applying the above
16 approach to the information I have available to me at this stage of my investigation
17 indicates that it is likely sales of English-language daily newspapers are a relevant
18 product market. Second, applying the same Merger Guidelines principles indicates
19 that is likely that local advertising in English-language local daily newspapers is
20 also a relevant product market that Tribune's acquisition of Freedom may affect.
My analysis in this area is ongoing.

19 10. I also examined the question of possible relevant geographic markets.
20 Based on my review of the information available to me, it is likely that there are at

1 least two relevant geographic markets: (1) Orange County and (2) Riverside
 2 County. The Merger Guidelines' approach to analyzing relevant geographic
 3 markets explains that "[t]he arena of competition affected by the merger may be
 4 geographically bounded if geography limits some customers' willingness or ability
 5 to substitute to some products, or some suppliers' willingness or ability to serve
 6 some customers." Merger Guidelines §4.2. Applying that approach to the
 7 currently available information, it is likely that Orange County and Riverside
 8 County are each a relevant product market.

9 11. The below table shows the shares of English-language local daily
 10 newspaper circulation for Tribune and Freedom in Orange County and Riverside
 11 County:

	TRIBUNE	FREEDOM
ORANGE COUNTY	38% (<i>Los Angeles Times</i>)	60.2% (Orange County <i>Register</i>)
RIVERSIDE COUNTY	12% (<i>Los Angeles Times</i>)	69% (Riverside <i>Press- Enterprise</i> and Orange County <i>Register</i>)

12 12. If the acquisition is consummated, according to the limited data
 13 available, the Tribune will sell virtually all English-language daily newspapers in
 14 Orange County and virtually all of the local daily advertising sold in English-
 15 language newspapers sold in Orange County. Similarly, the Tribune will have a
 16 dominant share of English-language newspapers sold and local advertising sold in
 17 English language newspapers in Riverside County. Although the *Desert Sun* makes
 18
 19
 20

1 sales in Riverside County, its Palm Springs location, a 56-mile drive from
2 Riverside, limits its competitive influence on the city and surrounding areas of
3 Riverside, due, in part, to the mountains that physically separate the western part of
4 Riverside County from the city of Palm Springs. My experience and economic
5 logic tells me that acquisitions, like the one here, which result in extremely high
6 market shares in properly defined product and geographic markets can be expected
7 to harm to competition. This is especially true when an acquisition results in a
8 monopoly. I have no reason to believe that this acquisition would be different.

I declare under penalty of perjury that the foregoing is true.



Robin Allen

March 17, 2016