UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice Antitrust Division 450 5th Street, N.W. Suite 7000 Washington, D.C. 20530 Plaintiff, v. GANNETT CO., INC., 7950 Jones Branch Drive McLean, Virginia 22107, BELO CORP., 400 South Record Street Dallas, Texas 75202, and SANDER MEDIA LLC, 28150 N. Alma School Parkway #103 PBM 509 Scottsdale, Arizona 85262 Defendants.	**CASE NO.** **JUDGE:** **FILED:**

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Belo Corp. ("Belo") by Gannett Co., Inc. ("Gannett"), and the simultaneous implementation of related agreements between Gannett and Sander Holdings Co. LLC, a wholly owned subsidiary of Sander Media LLC ("Sander"), pursuant to which broadcast television station KMOV-TV in St. Louis, Missouri, along with certain other broadcast television stations owned by Belo, will be transferred to and operated by Sander (collectively "the Transaction"), and to obtain other equitable relief. The Transaction likely would lessen competition substantially and would restrain trade in the sale of broadcast television spot advertising in the St. Louis Designated Market Area ("DMA"), which includes parts of Missouri and Illinois, in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1 and 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to the June 12, 2013, Agreement and Plan of Merger, Gannett will acquire all outstanding stock of Belo for approximately $1.5 billion, with a total transaction value of $2.2 billion including assumed debt. Gannett owns 23 broadcast television stations and numerous newspapers throughout the United States. Consummation of Gannett's acquisition of Belo would give Gannett ownership of Belo's 20 broadcast television stations; however, Federal Communications Commission ("FCC") rules prohibit Gannett from owning Belo stations in five DMAs where Gannett already owns broadcast television stations or newspapers. To comply with these ownership rules, Gannett has entered into an Asset Purchase Agreement and other related agreements with Sander Holdings Co., LLC, a wholly owned subsidiary of Sander, which would transfer ownership of six Belo stations in five DMAs, including KMOV-TV in St. Louis, to Sander. Sander will pay Gannett approximately $101 million for the six stations, significantly less than their actual market value. The agreements between Gannett and Sander are mutually contingent on and intended to close simultaneously with the merger between Gannett and Belo.

2. Gannett owns and operates KSDK-TV, the NBC affiliate in the St. Louis DMA. As the owner and operator of that station, Gannett sells KSDK-TV's advertising time. Based on

advertising sales revenues, KSDK-TV is one of the three largest commercial broadcast television stations in St. Louis.

3. Belo owns and operates KMOV-TV, the CBS affiliate in the St. Louis DMA. As the owner and operator of that station, Belo sells KMOV-TV's advertising time. Based on advertising sales revenues, KMOV-TV is one of the three largest commercial broadcast television stations in St. Louis.

4. Currently, Gannett's KSDK-TV and Belo's KMOV-TV vigorously compete for the business of local and national companies that seek to purchase local spot advertisements on broadcast television stations in St. Louis. This competition benefits advertisers by reducing prices and improving the quality of services advertisers receive from the stations.

5. Although Gannett will transfer ownership of six stations to Sander, the agreements between Gannett and Sander include: (1) eight-year assignable option agreements that permit Gannett to reacquire any of the stations (should existing FCC prohibitions be eliminated) or to transfer the options to a third party; (2) eight-year Shared Services Agreements under which Gannett will provide a variety of services to help Sander operate the stations, excluding joint advertising sales and negotiation of retransmission consent rights in DMAs such as St. Louis where Gannett also has television stations, in return for substantial payments from Sander to Gannett; (3) a financing guarantee obligating Gannett to repay, should Sander default, the balance of the $101 million loan Sander is obtaining to purchase the stations; and (4) Joint Sales Agreements in DMAs where Gannett owns newspapers but not television stations giving Gannett control of advertising sales at these Sander stations. Together, these agreements give Gannett significant influence over Sander's conduct in operating the stations, including KMOV-TV, and also diminish Gannett's and Sander's incentives to compete vigorously with each other in sales of broadcast television advertising in St. Louis.

6. If consummated, the Transaction would result in Gannett owning one of the top three commercial broadcast television stations in St. Louis and having significant influence over a second top three station serving the same area. Together, KMOV-TV and KSDK-TV have approximately a 50% market share of gross broadcast television advertising revenues in the St. Louis DMA. The St. Louis Fox affiliate is the only significant advertising competitor to those stations, while the next strongest stations, an ABC affiliate and a CW affiliate, are much weaker.

7. The Transaction would eliminate or greatly reduce the head-to-head competition between KSDK-TV and KMOV-TV in St. Louis and so eliminate or greatly reduce the benefits of that competition. Unless blocked, the Transaction is likely to lead to higher prices for broadcast television spot advertising in the St. Louis DMA in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1 and 18.

II. JURISDICTION AND VENUE

8. The United States brings this action pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, as amended, 15 U.S.C. §§ 4 and 25, to prevent and restrain Defendants from violating Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1 and 18.

9. Gannett and Belo sell broadcast television spot advertising in the St. Louis DMA, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Gannett transacts business and is found in the District of Columbia, where it owns and operates broadcast television station WUSA-TV, and is subject to the personal jurisdiction of

this Court. All Defendants have consented to venue and personal jurisdiction in this District. Therefore, venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c).

III. THE DEFENDANTS

11. Gannett is a Delaware corporation, with its headquarters in McLean, Virginia. Gannett reported revenues of over $5.3 billion in 2012. Gannett owns 23 commercial broadcast television stations in 19 markets in the United States, as well as 82 daily newspapers in markets throughout the United States. The broadcast television stations that Gannett owns include KSDK-TV, the NBC affiliate in St. Louis, Missouri.

12. Belo is a Delaware corporation, with its headquarters in Dallas, Texas. Belo reported revenues of over $714 million in 2012. Belo owns 20 commercial broadcast television stations in 15 markets throughout the United States, including KMOV-TV, the CBS affiliate in St. Louis, Missouri.

13. Sander is a Delaware limited liability company, with its headquarters in Scottsdale, Arizona. Sander Holdings Co. LLC ("Sander Holdings") is a wholly owned subsidiary of Sander. Sander is also the owner of proposed license assignees of six commercial broadcast television stations, including KMOV-TV in St. Louis, Missouri, to be acquired pursuant to agreements between Gannett and Belo and between Gannett and Sander Holdings that are part of the Transaction. Sander has no current business activity apart from this planned acquisition.

IV. THE TRANSACTION WOULD LIKELY SUBSTANTIALLY LESSEN COMPETITION AND UNREASONABLY RESTRAIN INTERSTATE TRADE AND COMMERCE

A. Broadcast Television Spot Advertising Is a Relevant Product Market

14. Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, mainly through wired cable or other terrestrial television systems and through satellite television systems. Broadcast television stations then sell advertising time to businesses that want to advertise their products to television viewers. Broadcast television "spot" advertising, which comprises the majority of a television station's revenues, is sold directly by the station itself or through its national representative on a localized basis and is purchased by advertisers who want to target potential customers in specific geographic areas. Spot advertising differs from network and syndicated television advertising, which are sold by television networks and producers of syndicated programs on a nationwide basis and broadcast in every market where the network or syndicated program is aired.

15. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Moreover, of all media, broadcast television spot advertising reaches the largest percentage of all potential customers in a particular target geographic area and is therefore especially effective in introducing and establishing the image of a product. For a significant number of advertisers, broadcast television spot advertising, because of its unique combination of attributes, is an advertising medium for which there is no close substitute. Other media, such as radio, newspapers, or outdoor billboards, are not desirable substitutes for broadcast television advertising. None of these media can

provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

16. Like broadcast television, cable television and satellite television channels combine elements of sight, sound, and motion, but they are not a desirable substitute for broadcast television spot advertising for two important reasons. First, satellite, cable, and other landline content delivery systems do not have the "reach" of broadcast television. Typically, broadcast television can reach well-over 90% of homes in a DMA, while cable television often reaches much less, e.g., 50% or fewer of the homes in the St. Louis DMA. As a result, an advertiser can achieve greater audience penetration through broadcast television spot advertising than through cable television. Second, because cable and satellite television may offer more than 100 channels, they fragment the audience into small demographic segments. Because broadcast television programming typically has higher rating points than cable television programming, it is much easier and more efficient for an advertiser to reach its target demographic on broadcast television. Media buyers often buy cable television and satellite television not so much as a substitute for broadcast television, but rather to supplement a broadcast television message, to reach a narrow demographic with greater frequency (e.g., 18–24 year olds) or to target narrow geographic areas within a DMA. A small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to cable and satellite advertising.

17. Internet-based media is not currently a substitute for broadcast television spot advertising. Although Online Video Distributors ("OVDs") such as Netflix and Hulu are important sources of video programming, as with cable television advertising, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. Non-video Internet advertising, e.g., website banner advertising, lacks the important combination of sight, sound,

and motion that gives television its impact. Consequently, local media buyers currently purchase Internet-based advertising primarily as a supplement to broadcast television spot advertising, and a small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to Internet-based advertising.

18. Broadcast television stations generally can identify advertisers with strong preferences for using broadcast television advertising. Broadcast television stations negotiate prices individually with advertisers and consequently can charge different advertisers different prices. During the individualized negotiations on price and available advertising slots that commonly occur between advertisers and broadcast television stations, advertisers provide stations with information about their advertising needs, including their target audience. Broadcast television stations could profitably raise prices to those advertisers who view broadcast television as a necessary advertising medium, either as their sole means of advertising or as a necessary part of a total advertising plan.

19. Accordingly, the sale of broadcast television spot advertising is a line of commerce under Section 7 of the Clayton Act and a relevant product market for purposes of analyzing the Transaction under Section 7 of the Clayton Act and Section 1 of the Sherman Act.

B. The St. Louis DMA Is the Relevant Geographic Market

20. DMAs are geographic units defined by A.C. Nielsen Company, a firm that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are ranked according to the number of households therein, and the St. Louis DMA is the 21st largest in the United States, containing over 1.2 million television households. The St. Louis DMA is centered on the city of St. Louis, Missouri, and encompasses 31 counties in the states of Illinois and Missouri. Signals from broadcast television stations located in

St. Louis reach viewers throughout the DMA, but signals from broadcast television stations located outside the DMA reach few viewers within the DMA. DMAs are used to analyze revenues and shares of broadcast television stations in the *Investing In Television BIA Market Report 2013* (1st edition), a standard industry reference.

21. Advertisers use broadcast television stations within the St. Louis DMA to reach the largest possible number of viewers across the DMA. Some of these advertisers are located in the St. Louis DMA and need to reach customers there; others are regional or national businesses that want to target consumers in the St. Louis, DMA. Advertising on television stations outside the St. Louis DMA is not an alternative for these advertisers because such stations cannot be viewed by a significant number of potential customers within the DMA. Thus, if there were a small but significant increase in broadcast television spot advertising prices within the St. Louis DMA, an insufficient number of advertisers would switch advertising purchases to television stations outside the St. Louis DMA to render the price increase unprofitable.

22. Accordingly, the St. Louis DMA is a section of the country under Section 7 of the Clayton Act and a relevant geographic market for the sale of broadcast television spot advertising for purposes of analyzing the Transaction under Section 7 of the Clayton Act and Section 1 of the Sherman Act.

C. The Transaction Would Harm Competition in the St. Louis DMA

23. Broadcast television stations compete for advertisers through programming that attracts viewers to their stations. In developing their own programming and in considering the programming of the networks with which they may be affiliated, broadcast television stations try to select programs that appeal to the greatest number of viewers and also try to differentiate their stations from others in the same DMA by appealing to specific demographic groups. Advertisers, in turn, are interested in using broadcast television spot advertising to reach a large audience, as

well as to reach a high proportion of the type of viewers that are most likely to buy their products.

24. Broadcast station ownership in the St. Louis DMA is already significantly concentrated. Three stations, each affiliated with a major network, had more than 80% of gross advertising revenues in 2012, with Gannett's KSDK-TV having a revenue share of nearly 30% and Belo's KMOV-TV having a revenue share of nearly 20%. Together, the Gannett and Belo stations have approximately 50% of all television station gross advertising revenues in the St. Louis DMA.

25. After the Transaction, even though KSDK-TV and KMOV-TV will continue to have different owners and maintain separate sales forces, the various agreements between Gannett and Sander create an ongoing relationship between Gannett and Sander that did not exist between competitors Gannett and Belo. These long-term agreements are likely to align Gannett's and Sander's incentives in the St. Louis DMA:

a. With the eight-year assignable option, Gannett will be able to sell to a third party the ability to buy KMOV-TV at any time, giving Gannett influence over Sander's future in the market and the power to choose its competitor in the St. Louis DMA;

b. Under its financing guarantee to Sander, Gannett is obligated to repay the balance of the loan financing Sander's purchase of the Belo stations and thus will have an incentive to avoid competing aggressively and forcing Sander into a position where it might default; and

c. Pursuant to the eight-year Shared Services Agreements, Sander will be dependent upon Gannett for key services necessary to run KMOV-TV and its other stations successfully and thus will be in a close ongoing business relationship with a key competitor.

Taken together, these agreements are likely to give Gannett significant influence over Sander and over Sander's operation of KMOV-TV. The agreements give each the ability and incentive to work cooperatively with the other to maximize their joint profits, to the detriment of their customers.

26. If KSDK-TV and KMOV-TV were to coordinate their competitive behavior, the market structure would operate as if the two stations were commonly owned. Using the Herfindahl-Hirschman Index ("HHI"), a standard measure of market concentration (defined and explained in Appendix A), a combination of KSDK-TV and KMOV-TV in the St. Louis DMA would result both in high concentration and a large change in concentration, increasing the HHI by 1161 points from 2431 to 3592. Under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (with an HHI in excess of 2500) and with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

27. In addition to increasing concentration in the St. Louis DMA, the Transaction involves two stations that are close substitutes for one another in a market with limited alternatives. KMOV-TV and KSDK-TV appeal to similar demographic groups, making them close substitutes for many viewers and advertisers. Only one other station in the St. Louis DMA, a Fox affiliate, has a comparable gross advertising revenue share. The St. Louis ABC and CW affiliates, which each have gross advertising revenue shares of less than 10%, are much less acceptable substitutes for many advertisers. The CW affiliate's programming tends to appeal to a different demographic, and neither the ABC nor the CW affiliate has strong local news programming, an important differentiator to advertisers in the St. Louis DMA.

28. In the St. Louis DMA, KMOV-TV and KSDK-TV compete head-to-head in the sale of broadcast television spot advertising and are close substitutes for a significant number of advertisers. Advertisers benefit from this competition. During individual price negotiations between advertisers and television stations in the St. Louis DMA, advertisers are able to "play

off" the stations against each other and obtain competitive rates from programs targeting similar demographics.

29. After the Transaction, advertisers in the St. Louis DMA would likely find it more difficult to "buy around" both KMOV-TV and KDSK-TV in response to higher advertising rates, than to buy around either one individually as they could have done before. The presence of the Fox affiliate alone would not be sufficient to enable enough advertisers to "buy around" KMOV-TV and KSDK-TV to defeat a price increase. Because a significant number of advertisers would likely be unable to reach their desired audiences as effectively unless they advertise on at least one station that is controlled or significantly influenced by Gannett, their bargaining positions will be weaker after the Transaction, and the advertising rates they pay would be likely to increase.

30. Accordingly, the Transaction is likely to substantially reduce competition and will restrain trade in the sale of broadcast television spot advertising in the St. Louis DMA.

D. Lack of Countervailing Factors

1. Entry and Expansion Are Unlikely

31. De novo entry into the St. Louis DMA is unlikely because the FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal became available, commercial success would come, at best, over a period of many years. In the St. Louis DMA, all of the major broadcast networks (CBS, NBC, ABC, Fox) are already affiliated with a licensee, the contracts last for many years, and the broadcast networks rarely switch licensees when the contracts expire. Thus, entry into the St. Louis DMA broadcast television advertising spot market would not be timely, likely, or

sufficient to deter Gannett and Sander, acting together, from anticompetitive increases in price or other anticompetitive conduct after the Transaction occurs.

32. Other broadcast television stations in the St. Louis DMA could not readily increase their advertising capacity or change their programming sufficiently in response to a price increase by KSDK-TV and KMOV-TV. The number of 30-second spots in a DMA are largely fixed. More slots cannot be created. This fact makes the pricing of spots very responsive to changes in demand. During so-called political years, for example, political advertisements crowd out commercial advertising and makes the spots available for commercial advertisers more expensive than they would be in nonpolitical years. Adjusting programming in response to a pricing change is risky, difficult, and time-consuming. Network affiliates are often committed to the programming provided by the network with which they are affiliated, and it often takes years for a station to build its audience. Programming schedules are complex and carefully constructed, taking many factors into account, such as audience flow, station identity, and program popularity. In addition, stations typically have multi-year contractual commitments for individual shows. Accordingly, a television station is unlikely to change its programming sufficiently or with sufficient rapidity to overcome a small but significant price increase imposed by KSDK-TV and KMOV-TV.

2. The Alleged Efficiencies Do Not Offset the Harm

33. Although Defendants assert that the Transaction would produce efficiencies, they cannot demonstrate acquisition-specific and cognizable efficiencies that would be sufficient to offset the Transaction's anticompetitive effects.

V. VIOLATIONS ALLEGED

34. The United States hereby repeats and realleges the allegations of paragraphs 1 through 33 as if fully set forth herein.

35. The Transaction likely would lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and also constitute entry into contracts and combinations that would unreasonably restrain interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. These acquisitions and agreements likely would have the following effects, among others:

a. competition in the sale of broadcast television spot advertising in the St. Louis DMA would be lessened substantially;

b. actual and perceived competition between KMOV-TV and KSDK-TV in the sale of broadcast television spot advertising in the St. Louis DMA would be diminished; and

c. the prices for spot advertising time on broadcast television stations in the St. Louis DMA would likely increase, and the quality of services likely would decline.

36. Unless restrained, the acquisition will violate Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. REQEST FOR RELIEF

37. The United States requests:

a. that the Court adjudge the proposed acquisition to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. that the Court permanently enjoin and restrain Defendants from carrying out the Transaction, or entering into any other agreement, understanding, or plan by which Belo would be acquired by Gannett, unless Defendants divest KMOV-TV in accordance with the proposed Final Judgment and Asset Preservation Stipulation and Order filed concurrently with this Complaint;

c. that the proposed Final Judgment giving effect to the divestiture be entered by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16;

d. that the Court award the United States the costs of this action; and

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

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

William J. Baer (D.C. Bar #324723)
Assistant Attorney General

Renata B. Hesse (D.C. Bar #466107)
Deputy Assistant Attorney General

Patricia A. Brink
Director of Civil Enforcement

Scott A. Scheele (D.C. Bar #429061)
Chief, Telecommunications and Media Section

Lawrence M. Frankel (D.C. Bar #441532)
Assistant Chief
Telecommunications and Media Section

Anupama Sawkar*
Carl Willner (D.C. Bar #412841)
Brent E. Marshall
Robert E. Draba (D.C. Bar #496815)
Trial Attorneys

United States Department of Justice
Antitrust Division
Telecommunications and Media Section
450 Fifth Street, N.W., Suite 7000
Washington, D.C. 20530
Phone: 202-514-5813
Facsimile: 202-514-6381
Email: anupama.sawkar@usdoj.gov

*Attorney of Record

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APPENDIX A

Herfindahl-Hirschman Index

The tern "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.*