will use the information to improve services to its customers.

No proprietary data, confidential information, or items of a sensitive nature will be collected. Responses are voluntary.

*Frequency:* Annual survey.

*Estimated Number and Description of Respondents:* Approximately 4,100 MMS customers on regional mailing lists, including Federal OCS oil, gas, and sulphur lessees and operators.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* We estimate 20–25 minutes to complete each survey, for a total annual burden of 427 hours. There are no recordkeeping requirements.

*Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* None.

*Comments:* We will summarize written responses to this notice and address them in our submission for OMB approval. We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Is the estimate of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744).

Dated: March 2, 2000.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 00–6662 Filed 3–16–00; 8:45 am]

**BILLING CODE 4310–MR–W**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Final Judgment and Competitive Impact Statement: United States of America v. CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems, Inc.* Case No. 1:99CV03212. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. § 16(b)–(h).

The United States filed a civil antitrust Complaint on December 6, 1999, alleging that the proposed acquisition of Outdoor Systems, Inc. (''OSI'') by CBS Corporation (''CBS'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that CBS and OSI compete head-to-head to sell out-of-home advertising displays in Three Metropolitan Areas: (1) New York, New York; (2) New Orleans, Louisiana; and (3) Phoenix, Arizona; (collectively ''the Three Metropolitan Areas''). Outdoor advertising companies sell out-of-home advertising display space to local and national customers. The out-of-home advertising display business in the Three Metropolitan Areas is highly concentrated. CBS, through TDI, a subsidiary of CBS-owned Infinity Broadcasting Corporation, and OIS would have a combined share of revenue is excess of 60 percent in New York, New York and a combined share in excess of 75 percent in Phoenix, Arizona and New Orleans, Louisiana. Unless the acquisition is blocked, competition would be substantially lessened in the Three Metropolitan Areas, and advertisers would likely pay higher prices.

The prayer for relief seeks: (a) An adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) Preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) An award to the United States of the costs of this action; and (d) Such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits CBS to complete its acquisition of OSI, yet preserves competition in the Three Metropolitan Areas where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the complaint was filed.

In Phoenix and New Orleans, the defendants are required to divest assets equivalent to all the out-of-home assets of one of the merging parties, thus completely restoring the pre-merger industry structure and resolving any competitive concerns. In New York, the defendants are required to divest assets yielding a net revenue of no less than $25.3 million, which is equivalent to all the out-of-home advertising assets of OSI with the exception of its bus shelter and subway businesses. With respect to these two businesses, if the parties possess both contracts as of February 2000, they are required to divest one of these businesses.

Unless the plaintiff grants a time extension, CBS must divest these outdoor advertising assets with one-hundred and fifty (150) days after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment with that one-hundred and fifty day period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If CBS does not divest the assets within the time periods specified in the final judgment, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the final Judgment have been accomplished, CBS shall take all steps necessary to maintain and operate the divestiture assets as active competitors; maintain the management, staffing, sales and marketing of the out-of-home advertising displays; and maintain out-of-home advertising displays in operable condition. Further, the proposed Final Judgment requires CBS to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Three Metropolitan Areas,

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States, describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Willie Hudgins, Assistant Chief, Litigation II, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington,

D.C. 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*

## Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon writing by the parties and submitted to the Court.

5. In the event (a) the plaintiff withdraws its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: December 6, 1999.

For Plaintiff United States:

Renee Eubanks,
*U.S. Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW, Suite 4000, Washington, DC 20005, Washington, DC 20005, (202) 307–0001.*

Dated December 6, 1999.

So Ordered:

Thomas F. Hogan,
*United States District Judge.*

For Defendant CBS Corporation and Infinity Broadcasting Corporation:

Helene Jaffe,
*Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153–0119, (212) 310–8000.*

For Defendants Outdoor Systems Inc.:

Lawrence R. Fullerton,
*Powell, Goldstein, Frazer, & Murphy, 1001 Pennsylvania Ave., NW, Washington, DC 20004, (202) 624–7282.*

## Final Judgment

*Whereas,* plaintiff, the United States of America, filed its Complaint in this action on December 6, 1999, and Plaintiff and Defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

*And Whereas,* Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And Whereas,* the essence of this Final Judgment is prompt and certain divestiture of the out-of-home advertising assets in the Three Metropolitan Areas, as defined below, to ensure that competition is substantially preserved;

*And Whereas,* plaintiff requires Defendants to make the divestitures for the purpose of maintaining the current level of competition in the sale of out-of-home advertising;

*And Whereas,* Defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that Defendants will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

*Now, Therefore,* before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

### I. Jurisdiction

This Court has jurisdiction over each of the Defendants hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the Defendants, as herein after defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

### II. Definitions

As used in this Final Judgment:

A. ''CBS'' means Defendant CBS Corporation, a Pennsylvania corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to, Infinity Broadcasting Corporation, and TDI Worldwide Inc., a subsidiary of CBS-owned Infinity Broadcasting Corporation.

B. ''Infinity'' means Defendant Infinity Broadcasting Corporation, a Delaware corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''OSI'' means Defendant Outdoor Systems, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. ''Defendants'' means CBS, Infinity, and OSI.

E. ''Net Revenues'' means gross revenues minus agency commissions as those terms are ordinarily and customarily calculated with respect to the assets covered by this Final Judgment.

F. ''Out-of-Home Advertising Display Assets'' means:

(1) CBS's business of selling advertising displays that appear on or in public buses in the New Orleans Metropolitan Area, the rights to place and sell advertising on such faces having been awarded to TDI through contract by the Regional Transit Authority in New Orleans or any other governing authority;

(2) Either (a) CBS's business of selling advertising displays that appear on or in public buses in the Phoenix Metropolitan Area, the rights to place and sell advertising on such faces having been awarded to TDI through contract by the Phoenix Transit System or any other governing authority, or (b) a combination of out-of-home advertising display faces in the Phoenix Metropolitan Area, to be approved by the United States in its sole discretion, consisting of mix of Bulletins, Thirty-sheet posters, Walls, and Spectaculars that yielded Net Revenues in 1998 of no less than the Net Revenues generated in 1998 from the sale of the outdoor advertising display faces described in Section II(F)(2)(a); and

(3) A combination of out-of-home advertising display faces owned and/or operated by the Defendants in the New York City Area, to be approved by the United States in its sole discretion, consisting of a mix of Bulletins, Thirty-sheet posters, Walls, and Spectaculars that yielded Net Revenues in 1998 of no less than twenty-five point three ($25.3) million dollars.

Out-of-Home Advertising Display Assets includes all tangible and intangible assets used in the sale of advertising on each of the display faces described above including, but not limited to, all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the display faces; all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of advertising on those display faces; all applicable customer lists, contracts, accounts, promotional materials, and credit records pertaining to the sale of advertising on those display faces; all applicable logs and other records maintained by Defendants in connection with the display faces; and maps or other documents depicting the location of the display faces.

G. ''New York City Subway Business'' means OSI's business of selling advertising on displays within the subway transit system of the New York City Area, including, but not limited to, subway car interior displays, platform postings and lighted platform displays, the rights to place and sell advertising on such displays pursuant to contract awarded by the Metropolitan Transit Authority of New York to OSI. The New York City Subway Business includes all tangible and intangible assets used in the sale of advertising on each of the display faces described above including, but not limited to, all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the display faces; all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of advertising on those display faces; all applicable customer lists, contracts, accounts, promotional materials, and credit records pertaining to the sale of advertising on those display faces; all applicable logs and other records maintained by Defendants in connection with the display faces; and maps or other documents depicting the location of the display faces.

H. ''New York City Bus Shelter Business'' means OSI's business of selling advertising on display faces mounted in glass in or on bus shelters and often backlit for 24-hour visibility, found along public bus routes in the New York City Area, the rights to place and sell advertising such displays, pursuant to contract awarded by the New York City Department of Transportation to OSI. The New York City Bus Shelter Business includes all tangible and intangible assets used in the sale of advertising on each of the display faces described above including, but not limited to, all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the display faces; all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of advertising on those display faces; all applicable customer lists, contracts, accounts, promotional materials, and credit records pertaining to the sale of advertising on those display faces; all applicable logs and other records maintained by Defendants in connection with the display faces; and maps or other documents depicting the location of the display faces.

I. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom CBS and OSI divest the assets required to be divested pursuant to this Final Judgment.

J. ''Bulletins'' are defined as structures typically sized 14′ x 48′ or larger, located primarily on major highways, expressways or principal arterials.

K. ''Thirty-sheet posters'' are defined as poster panels, typically of lithographed or silk-screened material, typically measuring 12′ x 25′ or 300 square feet or larger and located primarily on primary and secondary arterials.

L. ''Walls'' are defined as painted or computer generated vinyl advertisements found directly on building walls.

M. ''Spectaculars'' are defined as non-standard sized structures which are custom designed to gain maximum attention at key locations with mass consumer exposure.

N. ''Metropolitan Areas'' means: (1) With respect to New York, New York, the five boroughs of Brooklyn, Queens, Manhattan, the Bronx and Staten Island (''New York City Area''); (2) with respect to New Orleans, Louisiana, the parishes of St. Tammany, Orleans and Jefferson, (''New Orleans Metropolitan Area'') and (3) with respect to Phoenix, Arizona, Maricopa County (''Phoenix Metropolitan Area'').

O. ''Three Metropolitan Areas'' means the New York City Area, the Phoenix Metropolitan Area; and the New Orleans Metropolitan Area.

## III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each Defendant shall require, as a condition of the sale or other disposition of all of substantially all of their out-of-home advertising business in any of the Three Metropolitan Areas, that the purchasing party or parties agree(s) to be bound by the provisions of this Final Judgment.

## IV. Divestiture

A. Defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred fifty days (150) after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Out-of-Home Advertising Display Assets to an Acquirer (or Acquirers) acceptable to the United States in its sole discretion.

B. If, as of February 1, 2000, (1) CBS or OSI is deriving revenue from the sale of advertising on displays within the subway transit system of the New York City Area, in accordance with any franchise, contract, agreement with, understanding, or condition imposed by

the Metropolitan Transit Authority, and (2) CBS or OSI is deriving revenue from the sale of advertising on display faces found along public bus routes in the New York City Area, in accordance with any franchise, contract, agreement with, understanding, or condition imposed by the New York City Department of Transportation, then CBS and/or OSI must divest, by the terms of this Final Judgment, at their option, either the New York City Subway Business or the New York City Bus Shelter Business; and inform the United States on February 1, 2000 which of the two businesses they intend to divest. The divestitures required under this subsection shall also be accomplished within one hundred fifth (150) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to an Acquirer acceptable to the United States is its sole discretion.

C. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible and shall use their best efforts to obtain all transit or other governing authority consents and approvals necessary to complete the divestitures. The United States, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

D. In accomplishing the divestitures ordered by this Final Judgment Defendants promptly shall make known, by usual and customary means, the availability of the assets required to be divested pursuant to Section IV (A) and (B) of this Final Judgment (''Divestiture Assets''). Defendants shall inform any person making any inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets, customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the physical facilities associated with the assets and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall not interfere with any negotiations by any Acquirer to employ any of Defendants' employees who work at, or whose principal responsibilities relate to, the Divestiture Assets.

G. Defendants shall take no action, direct or indirect, that will impede in any way the operation of Divestiture Assets.

H. Unless the United States otherwise consents in writing and whether pursuant to Section IV or Section V of this Final Judgment:

(1) The divestitures in the Phoenix Metropolitan Area shall be made to a single Acquirer;

(2) The divestitures in the New Orleans Metropolitan Area shall be made to a single Acquirer; and

(3) The divestitures in the New York City Area of the New York City Subway Business or New York City Bus Shelter Business; and those assets described in Section II (F)(3) of this Final Judgment, shall be made to a single Acquirer. If, after making a reasonable, good faith effort, Defendants are unable to effect a sale to a single Acquirer, they may submit more than one Acquirer for approval by the United States which, in its sole discretion, may determine whether to permit such a sale.

1. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include all of the Divestiture Assets and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by an Acquirer or Acquirers as viable, ongoing commercial businesses engaged in the sale of out-of-home advertising and that the divestiture of such advertising assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment: (1) Shall be made to an Acquirer (or Acquirers) who it is demonstrated to the United States' sole satisfaction has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the sale of out-of-home advertising; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and CBS or OSI give CBS or OSI the ability unreasonably to raise the Acquirer's (or Acquirers') costs, to lower the Acquirer's (or Acquirers') efficiency, or otherwise to interfere with the ability of the Acquirer (or Acquirers) to compete effectively.

**V. Appointment of Trustee**

A. In the event that Defendants have not divested the Divestiture Assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States in its sole discretion to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. In the event that divestitures are required under Section IV(B), then the trustee shall have the right in, in its sole discretion, to divest either the New York City Subway Business or the New York City Bus Shelter Business. The trustee shall also have the right, in its sole discretion, to divest either the assets described in Section II(F)(2)(a) or the assets described in Section II(F)(2)(b). The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures of Divestiture Assets at the earliest possible time to an Acquirer (or Acquirers) acceptable to the United States in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its

services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants as appropriate according to ownership of the assets and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of physical facilities associated with the displays and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After it appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact wit any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not bee accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff and the Defendants, each of whom shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

**VI. Notice**

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), Defendants shall give thirty (30) days notice to the United States prior to acquiring any assets of or any interest, including any financial, security, loan, equity or management interest, in any out-of-home display advertising business, that owns and/or operates any out-of-home displays that have a similar advertising purpose as the out-of-home displays currently held by the Defendants:

(1) In the new Orleans metropolitan Area and the Phoenix Metropolitan Area that generates Net Revenues of $250,000 or greater over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated; and

(2) In the New York City Area that generates Net Revenues of $3.9 million or greater over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated.

Defendants are not required, however, to give notice for any acquisition derived from Defendants' successful bid on any public contract. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

**VII. Notification**

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify the United States of the proposed divestitures. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name and address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of notice, the United States may request from Defendants, the proposed Acquirer (or Acquirers), or any other third party additional information concerning the proposed divestitures and the proposed Acquirer or Acquirers. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer (or Acquirers), and any third party, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice to Defendants an the trustee that the United States does not object, then the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer (or Acquirers) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VIII. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Defendants have taken to solicit a buyer for the Divestiture Assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, but not be limited to, the efforts of Defendants to maintain and operate the Divestiture Assets as active competitors; maintain the management, staffing, sales, and marketing of the Divestiture Assets; and maintain the Divestiture Assets in operable condition. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Defendants shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

**IX. Preservation of Assets**

Until the divestitures required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to maintain and operate the Divestiture Assets in each of the Three Metropolitan Areas, as active competitors; maintain the management, staffing, sales and marketing of the Divestiture Assets; and maintain the Divestiture Assets in operable condition. Defendants shall take no action that would jeopardize the divestitures required under this Final Judgment.

**X. Financing**

The Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer (or Acquirers) made pursuant to Sections IV or V of this Final Judgment.

**XI. Compliance Inspection**

For purposes of determining or securing compliance with the Final Judgment or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division of the United States Department of Justice, and on reasonable notice to the Defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the Defendants' principal offices, the Defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendants to the plaintiff, the Defendants represent and identify in writing the material in any such information or documents to which a claim or protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by the plaintiff to the Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendants are not a party.

**XII. Retention of Jurisdiction**

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

**XIII. Termination**

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

**XIV. Public Interest**

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

**Competitive Impact Statement**

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files 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**

Plaintiff filed a civil antitrust Complaint on December 6, 1999, alleging that a proposed acquisition of Outdoor Systems, Inc. (''OSI'') by CBS Corporation and Infinity Broadcasting Corporation (collectively ''CBS'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that CBS and OSI compete head-to-head-to sell outdoor advertising in three metropolitan areas: (1) The New York City Area; (2) The New Orleans, Louisiana Metropolitan Area; and (3)

The Phoenix, Arizona Metropolitan Area, (collectively ''the Three Metropolitan Areas''). Outdoor advertising companies sell out-of-home advertising display space to local and national customers. The out-of-home advertising display business in the Three Metropolitan Areas is highly concentrated. CBS and OSI have a combined share of revenue ranging from about 60 percent to over 90 percent in the Three Metropolitan Areas. Unless the acquisition is blocked, competition would be substantially lessened in the Three Metropolitan Areas, and advertisers would pay higher prices.

The prayer for relief seeks: (a) An adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act: (b) Preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) An award to the United States of the costs of this action; and (d) Such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits CBS to complete its acquisition of OSI, yet preserves competition in the Three Metropolitan Areas where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed along with the Complaint.

The proposed Final Judgment orders CBS to divest out-of-home advertising displays in each of the Three Metropolitan Areas. In particular, CBS must divest its business of selling advertising on buses in the New Orleans Metropolitan Area. In the Phoenix Metropolitan Area, CBS is required to divest either its bus advertising business or out-of-home advertising displays that generated the same amount of net revenues. In the New York City Area, CBS will divest a package of out-of-home advertising displays, defined in Section II F(3) of the proposed Final Judgment, worth approximately $25.3 million. In addition, if, as of February 1, 2000, CBS is deriving revenue from the sale of advertising on subway displays *and* from bus shelters in the New York City Area, then CBS will divest, at its option, either the subway or the bus shelter advertising business.

Unless the plaintiff grants an extension of time, CBS must divest the out-of-home advertising displays within one hundred fifty (150) days after the filing of the Complaint in this action or within five (5) business days after notice of entry of the proposed Final Judgment, whichever is later.

If CBS does not divest the out-of-home advertising displays in the specified areas within the divestiture period, the Court, upon plaintiff's application, shall appoint a trustee to sell the displays. The proposed Final Judgment also requires that, until the divestitures mandated by the proposed Final Judgment have been accomplished in the Three Metropolitan Areas, CBS and OSI must preserve the out-of-home advertising displays to be divested and take all steps necessary to maintain and operate them as active competitors. Further, Section VI of the proposed Final Judgment requires CBS to give the United States prior notice regarding certain future out-of-home advertising display acquisitions or agreements pertaining to the sale of out-of-home advertising in the Three Metropolitan Areas.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain, for a period of ten years, jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. The Alleged Violations

### *A. The Defendants*

CBS, a major corporation engaged in numerous media businesses, including out-of-home advertising, is a Pennsylvania corporation headquartered in New York, New York. CBS conducts its out-of-home advertising business through TDI Worldwide, Inc. (''TDI''), a wholly owned subsidiary of CBS-owned Infinity Broadcasting Corporation (''Infinity''). TDI sells out-of-home advertising in various markets throughout the United States, including the Three Metropolitan Areas.

Infinity is a Delaware corporation headquartered in New York, New York. Infinity owns and/or operates numerous radio stations in major markets in the United States and conducts the sale of out-of-home advertising through its subsidiary, TDI.

OSI is a Delaware corporation headquartered in Phoenix, Arizona. OSI is the largest out-of-home advertising company in North America, operating over 100,000 out-of-home advertising display faces in approximately 90 markets throughout the United States, including in each of the Three Metropolitan Areas.

### *B. Description of the Events Giving Rise to the Alleged Violations*

On May 17, 1999, CBS entered into an Agreement and Plan of Merger with OSI. After a newly formed and wholly owned subsidiary of Infinity is merged into OIS, OSI shareholders will receive shares of Infinity valued at approximately $6.5 billion. In addition, Infinity will assume debt obligation of OSI valued at approximately $1.8 billion, bringing the total transaction value to $8.3 billion.

CBS and OSI compete for the business of advertisers seeking to obtain out-of-home advertising space in the Three Metropolitan Areas. The proposed acquisition of OSI by CBS would eliminate that competition in violation of Section 7 of the Clayton Act.

### *C. The Relevant Markets and Concentration*

The Complaint alleges that the sale of out-of-home advertising constitutes a relevant product market and a line of commerce and that each of the Three Metropolitan Areas constitutes a relevant geographic market and section of the country for antitrust purposes.

Advertisers select out-of-home advertising based on a number of factors, including the size of the target audience (individuals most likely to purchase the advertiser's products or services), the vehicular and pedestrian traffic patterns of the audience, as well as other audience characteristics. Many advertisers seek to reach a large percentage of their audience by selecting out-of-home advertising forms, like billboards, that appear on highways, roads and streets where vehicle and pedestrian traffic is high. This way, the advertisements will be viewed frequently by the advertiser's target audience.

In some densely populated metropolitan areas, a significant number of advertisers also select out-of-home advertising displayed within metropolitan transit authority systems. This includes displays found on the sides of buses and within subway systems. Advertisers select advertising space within a transit system because of the large number of viewers who will routinely be exposed to the advertiser's message each day. Such viewers include commuters who use the transit system, as well as pedestrians and passengers in vehicles.

Out-of-home advertising has prices and characteristics that are distinct from other advertising media. It is particularly suitable for highly visual, limited-information advertising, because consumers are exposed to an out-of-home advertisement for only a brief period of time. Out-of-home advertising is typically less expensive and more cost-efficient than other media at reaching an advertiser's target audience.

Many advertisers who use out-of-home advertising also advertise in other media, including radio, television, newspapers and magazines, but use out-of-home advertising when they want a large number of exposures to consumers at a low cost per exposure.

For many advertising customers, out-of-home advertising has particular characteristics that make it an advertising medium for which there is no close substitute. Such customers would not switch to another advertising medium if out-of-home advertising prices increased by a small but significant amount.

Geographically, out-of-home advertising is typically offered on a localized, market-by-market basis, rather than nationally or regionally. Much of the inventory (*e.g.,* transit advertising contracts or leases for billboard space) is obtained on a local basis through contracts between out-of-home advertising firms and municipal authorities or property owners. Firms that sell out-of-home advertising set prices based on local market conditions and employ local sales forces.

Similarly, many advertisers need to reach consumers in a particular city or metropolitan area. For those advertisers, advertising that targets consumers in a different area (or outside the city or metropolitan area) is not an adequate substitute. Such advertisers may have their businesses located in that city or metropolitan area and therefore need to reach that area's consumers. For many advertisers who target consumers in each of the Three Metropolitan Areas, there are no reasonable substitutes for out-of-home advertising located within each of the Three Metropolitan Areas. A small but significant increase in the price of out-of-home advertising in each of the Three Metropolitan Areas would not cause these advertisers to turn to out-of-home advertising located outside each area.

The Complaint alleges that CBS's proposed acquisition of OSI would lessen competition substantially in the sale of out-of-home advertising in each of the Three Metropolitan Areas. The proposed transaction would create further market concentration in already highly concentrated markets, and CBS would control a substantial share of the out-of-home advertising revenues in these markets.

In the New York City Area, CBS and OSI are the number one and number two providers of out-of-home advertising, respectively. After the merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would exceed 60 percent. The approximate Herfindahl-Hirschman Index (''HHI''), explained in Exhibit A, attached hereto, post-merger would be 3960, representing an increase of 1850 points.

In the New Orleans Metropolitan Area, OSI and CBS are two of four major providers of out-of-home advertising. Post-merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would increase to over 90 percent and the approximate post-merger HHI would be 3944, representing an increase of 672 points.

In the Phoenix Metropolitan Area, OSI and CBS are two of four major providers of out-of-home advertising. Post-merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would increase to over 75 percent. The approximate post-merger HHI would be 5904, representing an increase of 568 points.

*D. Harm to Competition as a Result of the Merger*

In each of the Three Metropolitan Areas, CBS and OSI compete head-to-head, and, for many local and/or national advertisers buying certain types of out-of-home advertising, are each other's closest competitor. During individual price negotiations, these advertisers are currently able to ensure competitive prices by obtaining rates from both OSI and CBS and playing the rates of one off the rates of the other. CBS's acquisition of OSI will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using CBS's out-of-home advertising displays. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give CBS the ability to raise prices and reduce the quality of its service to advertisers in each of the Three Metropolitan Areas.

New entry into the out-of-home advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

For all of these reasons, plaintiff concluded that the proposed transaction would lessen competition substantially in the sale of out-of-home advertising in the Three Metropolitan Areas, eliminate actual and potential competition between CBS and OSI, and result in increased prices and/or reduced quality of services for out-of-home advertisers in each of the Three Metropolitan Areas, all in violation of Section 7 of the Clayton Act.

**III. Explanation of the Proposed Final Judgment**

The proposed Final Judgment would preserve existing competition in the sale of out-of-home advertising in the Three Metropolitan Areas. In the Phoenix and New Orleans Metropolitan Areas, CBS is required to divest assets equivalent to all the out-of-home assets of one of the merging parties, thus completely restoring the pre-merger industry structure and resolving any competitive concerns. In the New York City Area, CBS is required to divest a package of out-of-home advertising displays generating approximately $25.3 million in revenue—the same amount of revenue OSI's out-of-home advertising assets generated last year, with the exception of the revenue earned by its bus shelter and subway advertising operations. With respect to bus shelters and subways, if CBS if offering both kinds of advertising for sale as of February 1, 2000, it is required to divest one of those lines of business. The objective of the divestiture is to ensure that the purchaser of the divested assets receives sufficient assets to compete effectively in the market and replaces the competitor lost as a result of the merger of CBS/OSI. Out-of-home advertising displays worth $25.3 million, along with potentially either the bus shelter or subway advertising business, accomplishes this objective and thereby effectively restores the pre-merger competitive situation in the New York market.[1]

Unless plaintiff grants an extension of time, the divestitures must be completed within one hundred fifty (150) days after the filing of the Complaint in this matter or within five (5) business days after notice of entry of the proposed Final Judgment by the Court, whichever is later.

Until the divestitures occur in all Three Metropolitan Areas, defendants must maintain and operate the advertising displays as active competitors; maintain the management and staffing, sales and marketing of the advertising assets; and maintain the assets to be divested in operable condition. This requirement ensures that the advertising assets remain viable and can be used effectively by the proposed purchasers.

The divestitures must be made to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include

[1] As of February 1, 2000, CBS was engaged in the sale of advertising on bus shelters and subways in the New York City Area and therefore must divest one of these businesses.

all the assets of the out-of-home advertising display business being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial out-of-home advertising businesses. In addition, the purchaser or purchasers must have the intent and capability of competing effectively in the sales of out-of-home advertising and there must be no conditions restricting competition in the terms of the sale. These provisions are intended to ensure that the purchasers chosen by the defendants (or the trustee) can effectively replace competition that may be lost due to the merger.

If defendants fail to divest these out-of-home advertising displays within the time periods specified in the proposed Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

Section VI of the proposed Final judgment requires CBS to provide at least thirty (30) days' notice to the Department of Justice before acquiring more than a *de minimis* interest in any assets of, or any interest in, another out-of-home advertising display company in the Three Metropolitan Areas. Such acquisitions could raise competitive concerns, but might be too small to be reported otherwise under the Hart-Scott-Rodino premerger notification statute. Thus, this provision ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Three Metropolitan Areas.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of CBS's proposed transaction with OSI in the Three Metropolitan Areas. Nothing in the proposed Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of the defendants in the Three Metropolitan Areas.

## IV. Remedies Available to Potential Private Litigants

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

## V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the plaintiff, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Willie L. Hudgins, Assistant Chief, Litigation II, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final judgment, a full trial on the merits of its compliant against defendants. Plaintiff is satisfied, however, that the divestiture and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of out-of-home advertising display in the Three Metropolitan Areas and will effectively prevent the anticompetitive effects that would result from the proposed acquisition.

## VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment '' is in the public interest.'' In making that determination, the Court may consider

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement ad modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. § 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

The courts have recognized that the term '''public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662,669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,''

*Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.,* 719 F.2d 558,565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985).

In conducting this inquiry,'' [t]he Court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[2] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-American Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.,* 648 F.2d 660,666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of the insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they:

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

*United States Armour & Co.,* 402 U.S. 673,681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict then the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest''.[4]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

## VIII. Determination Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: February 10, 2000.

Respectfully submitted,

Renee Eubanks,
*U.S. Department of Justice, Antitrust Division, 1401 H Street, NW; Suite 4000, Washington, DC 20530, (202) 307–0001.*

## Exhibit A.—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It 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 thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2$=2600). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. 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 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guideline § 1.51.

## Certificate of Service

I, Renee Eubanks, hereby certify that, on February 10, 2000, I caused the foregoing document to be served on defendants CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems Inc., having a copy mailed, first-class, postage prepaid, to:

**Helene Jaffe,**

*Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Counsel for CBS Corporation and Infinity Broadcasting Corporation.*

**Mitchell Raup,**

*Mayer, Brown & Platt, 1909 K Street, N.W., Washington, D.C. 2006, Counsel for Outdoor Systems, Inc.*

[FR Doc. 00–4593 Filed 3–16–00; 8:45 am]

BILLING CODE 4410–11–M

[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[3] *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'') (citations omitted).

[4] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette,* 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).