reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–31199 Filed 12–27–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gannett Co., Inc., Belo Corp., and Sander Media LLC; Proposed Final Judgment and Competitive Impact Statement

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. *Gannett Co., Inc., Belo Corp., and Sander Media LLC,* Civil Action No. 1:13–cv–01984. On December 16, 2013, the United States filed a Complaint alleging that Gannett's proposed acquisition of Belo, the sale of KMOV–TV in St. Louis to Sander, and Sander's operation of KMOV–TV subject to various agreements between Sander and Gannett would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires Gannett Co., Inc., Belo Corp., and Sander Media LLC to divest KMOV–TV.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC, 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://justice.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Scott A. Scheele, Chief, Telecommunications and Media Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530 (telephone: 202–514–5621).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 450 5th Street, NW., 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. 1:13–cv–01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

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., Web site 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,

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** Attorney of Record*
Dated: December 16, 2013

APPENDIX A

Herfindahl-Hirschman Index

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v.

GANNETT CO., INC., BELO CORP., and SANDER MEDIA LLC, Defendants.

Case No. 1:13-cv-01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), plaintiff United States of America (''United States'') 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

Defendants Gannett Co., Inc. (''Gannett''), and Belo Corp. (''Belo'') entered into an Agreement and Plan of Merger, dated June 12, 2013, pursuant to which Gannett will acquire Belo for approximately $1.5 billion, with a total transaction value of $2.2 billion, including assumed debt. Gannett has also entered into an Asset Purchase Agreement and other related agreements with Sander Holdings Co. LLC, a wholly-owned subsidiary of defendant Sander Media LLC (''Sander''), which would sell KMOV–TV in St. Louis, Missouri, and five other Belo broadcast television stations to Sander for considerably below market price and would create a close, ongoing business relationship between Gannett and Sander. This merger, asset purchase, and other related agreements are referred to herein collectively as ''the Transaction.''

The United States filed a civil antitrust Complaint on December 16, 2013, seeking to prevent the Transaction. The Complaint alleges that the Transaction's likely effect would be to increase broadcast television spot advertising prices in the St. Louis Designated Market Area (''DMA'') in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1, 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment designed to eliminate the anticompetitive effects of the Transaction. The proposed Final Judgment, which is explained more fully below, requires Defendants to divest KMOV–TV to an Acquirer approved by the United States in a manner that preserves competition in the St. Louis DMA. The Hold Separate requires Defendants to take certain steps to ensure that KMOV–TV is operated as a competitively independent, economically viable business that is uninfluenced by Gannett so that competition is maintained until the required divestiture occurs.

The United States and 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.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

1. The Defendants

Gannett, a Delaware corporation with headquarters in McLean, Virginia, owns and operates 23 broadcast television stations nationwide, 12 in top-25 markets. Belo, a Delaware corporation with headquarters in Dallas, Texas, owns and operates 20 broadcast television stations nationwide, 9 in top-25 markets. Sander, a Delaware limited liability company with headquarters in Scottsdale, Arizona, has no current business activity other than preparing to acquire six Belo stations, including KMOV–TV in St. Louis, as part of the Transaction.

2. The Proposed Transaction

Federal Communications Commission (''FCC'') rules prohibit Gannett from acquiring the Belo stations in five markets where Gannett already owns television stations or newspapers. To comply with these rules, Gannett has agreed to transfer six Belo stations in five DMAs, including KMOV–TV in St. Louis, to Sander simultaneously with the merger of Gannett and Belo. Although Gannett will formally transfer KMOV–TV to Sander, the Transaction includes additional agreements between

Gannett and Sander that would likely give Gannett significant influence over Sander's operation of the stations, including KMOV–TV, and would likely diminish Gannett's incentives to compete vigorously against Sander in the sale of broadcast television spot advertising in St. Louis. These agreements include: (1) eight-year assignable options permitting 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 (excluding joint advertising sales and negotiation of retransmission consent rights in DMAs such as St. Louis where Gannett also has television stations) to help Sander operate the stations, in return for substantial payments from Sander to Gannett; (3) a financing guarantee obligating Gannett to repay the balance of the $101 million loan Sander is obtaining to purchase the stations should Sander default; and (4) Joint Sales Agreements (only in DMAs where Gannett does not own television stations) giving Gannett control of advertising sales.

The Transaction, as initially agreed to by Defendants on June 12, 2013, and as subsequently amended, would lessen competition substantially and restrain trade in the sale of broadcast television spot advertising in the St. Louis DMA, which includes parts of Missouri and Illinois. This Transaction is the subject of the Complaint and proposed Final Judgment filed by the United States on December 16, 2013.

B. Anticompetitive Consequences of the Transaction

1. The Relevant Product

The Complaint alleges that the sale of broadcast television spot advertising constitutes a relevant product market for analyzing this acquisition under the Clayton and Sherman Acts. Television stations attract viewers through their programming and then sell advertising time to businesses wanting to advertise their products to those television viewers. Broadcast television ''spot'' advertising is purchased by advertisers seeking to target potential customers in specific geographic markets. It differs from network and syndicated television advertising, which are sold on a nationwide basis by major television networks and by producers of syndicated programs and are broadcast in every market where the network or syndicated program is aired.

Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Broadcast television spot advertising reaches the largest percentage of potential customers in a targeted geographic market and is therefore especially effective in introducing and establishing a product's image.

Because of this unique combination of attributes, broadcast television spot advertising has no close substitute for a significant number of advertisers. Cable television spot advertising and Internet-based video advertising lack the same reach; radio spots lack the visual impact; and newspaper and billboard ads lack sound and motion, as do many internet search engine and Web site banner ads. Through information provided during individualized price negotiations, stations can readily identify advertisers with strong preferences for using broadcast television advertising and ultimately can charge different advertisers different prices. Consequently, a small but significant increase in the price of broadcast television spot advertising is unlikely to cause enough advertising customers to switch enough advertising purchases to other media to make the price increase unprofitable.

2. The Relevant Market

The Complaint alleges that the St. Louis DMA constitutes a relevant geographic market for analyzing this acquisition under the Clayton and Sherman Acts. DMAs are geographic units defined by A.C. Nielsen Company for advertising purposes. The St. Louis DMA is the 21st largest in the United States, containing over 1.2 million television households. Signals from full-powered television stations in the St. Louis area reach viewers throughout that DMA, so advertisers use television stations in the St. Louis DMA to target the largest possible number of viewers within the entire DMA. Some of these advertisers are located in the St. Louis area and trying to reach customers there; others are regional or national businesses wanting to target consumers in the St. Louis area. Advertising on television stations outside the St. Louis DMA is not an alternative for either group, because signals from television stations outside the St. Louis DMA reach few viewers in the St. Louis DMA. Thus, advertising on those stations does not reach a significant number of potential customers in the St. Louis DMA.

3. Harm to Competition in the St. Louis DMA

The Complaint alleges that 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 unreasonably restrain interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Based on advertising sales revenues, Gannett's NBC-affiliated KSDK–TV and Belo's CBS-affiliated KMOV–TV are two of the three largest commercial broadcast television stations in the St. Louis DMA. Broadcast station ownership in the St. Louis DMA is already significantly concentrated, with more than 80% of gross advertising revenues in 2012 attributable to only three stations. Together, KMOV–TV and KSDK–TV have approximately 50% of all television station gross advertising revenues in the St. Louis DMA. The St. Louis Fox affiliate is the only significant advertising competitor to these stations. The St. Louis ABC and CW affiliates each have gross advertising revenue shares of less than 10%. If KSDK–TV and KMOV–TV were to coordinate their competitive behavior, then the market structure would operate as if the two stations were commonly owned in a highly concentrated market.[1]

KMOV–TV and KSDK–TV are not only two of the largest stations in St. Louis, they are also close substitutes for one another in this concentrated market with its limited alternatives. KMOV–TV and KSDK–TV appeal to similar demographic groups, making them close substitutes for many viewers and advertisers. The programming on the CW affiliate tends to appeal to a younger demographic, and neither the ABC nor the CW affiliate has strong local news programming, which is an important differentiator to advertisers in the St. Louis DMA. As a result, advertisers view the St. Louis ABC and CW affiliates as much less acceptable substitutes for KDSK–TV and KMOV–TV. 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 any price increase imposed by these two stations through coordinated action.

[1] Using the Herfindahl-Hirschman Index (''HHI''), a standard measure of market concentration, the post-acquisition HHI (combining KMOV–TV's and KDSK–TV's shares) would be about 3592, an increase of about 1161 points. Under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (i.e., HHI over 2500) with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

After the Transaction closes, KSDK–TV and KMOV–TV will continue to have different owners and maintain separate sales forces. Still, the Transaction would alter the competitive landscape in the St. Louis DMA and likely harm competition there by creating an ongoing, intertwined relationship between Gannett and Sander that did not exist between Gannett and Belo. In this new relationship, Gannett will have significant influence over Sander and Sander's operation of KMOV–TV. This could reduce competition between KSDK–TV and KMOV–TV in at least three ways:

1. Through the eight-year assignable option, which gives Gannett the practical ability to sell KMOV–TV to any other person, Gannett can displace Sander at any time. Losing KMOV–TV would end Sander's income stream from the station, so Sander's knowledge that Gannett could exercise the option would create an incentive for Sander not to upset Gannett by competing vigorously with KSDK–TV going forward. Exercising the option also effectively lets Gannett choose its competitor in St. Louis.

2. Through the financing guarantee, which requires Gannett to repay the loan financing Sander's purchase of the Belo stations if Sander defaults, Gannett has a reduced incentive to compete aggressively with Sander. Aggressive competition from Gannett could push Sander into default, in which case Gannett would have to pay off the loan.

3. Through the eight-year Shared Services Agreements, Sander will be dependent on a competitor for key services that Sander needs to run KMOV–TV successfully. This dependence on Gannett creates an incentive for Sander not to compete too strongly with KSDK–TV.

In sum, the sale of KMOV–TV to Sander does not adequately address the competitive problem that would exist in the St. Louis DMA from the Gannett-Belo merger without the sale to Sander. With these entanglements, Sander is not sufficiently separate from Gannett to be an effective competitor. The agreements give both Gannett and Sander the incentive and the means to work together cooperatively to maximize their joint profits at the expense of their customers.

Currently, KSDK–TV and KMOV–TV vigorously compete for the business of local, regional, and national firms seeking to advertise on St. Louis television stations. Advertisers benefit from this competition. During individual price negotiations between advertisers and St. Louis television stations, advertisers are able to ''play off'' KSDK–TV and KMOV–TV against each other and obtain competitive rates for programs that target similar demographics. The Transaction is likely to attenuate this competition and thereby adversely affect a substantial volume of interstate commerce. It likely would have the following effects, among others:

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

b. Actual and perceived potential competition between Gannett and Sander in the sale of broadcast television spot advertising time in the St. Louis DMA likely would be diminished; and

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

After the Transaction, a significant number of St. Louis DMA advertisers would not be able to reach their desired audiences with equivalent efficiency without advertising on stations controlled or significantly influenced by Gannett. The Transaction, therefore, is likely to enable Gannett to raise prices unilaterally.

4. Lack of Countervailing Factors

The Complaint alleges that entry or expansion in the St. Louis DMA broadcast television spot advertising market would not be timely, likely, or sufficient to prevent anticompetitive effects. New entry in the St. Louis DMA is unlikely since a new station would require an FCC license, which is difficult to obtain. Even if a new station became operational, commercial success would come over a period of many years at best. Other television stations in the St. Louis DMA could not readily increase their advertising capacity or change their programming in response to a price increase by KDSD–TV and KMOV–TV. The number of 30-second spots available at a station is generally fixed, and additional slots cannot be created. Adjusting programming in response to a pricing change is risky, difficult, and time-consuming. Programming schedules are complex and carefully constructed, and television stations often have multi-year contractual commitments for individual shows or are otherwise committed to programming provided by their affiliated network.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the Transaction in the St. Louis DMA by maintaining KMOV–TV as an independent, economically viable competitor. The proposed Final Judgment requires Defendants to divest KMOV–TV to an Acquirer selected by Defendants and approved by the United States. To achieve this result, Gannett will divest its option on KMOV–TV to the Acquirer, and Sander will divest its interests in the station and the assets used to operate KMOV–TV.

The ''Divestiture Assets'' are defined in Paragraph II.G of the proposed Final Judgment to cover all assets used primarily in the operation of KMOV–TV. These assets include real property, equipment, FCC licenses, contracts, intellectual property rights, programming materials, and customer lists maintained by Belo or Sander in connection with KMOV–TV. These do not include assets that are not primarily used in the operation of KMOV–TV, but are maintained at the corporate level and used to support multiple stations. Thus, Defendants will be able to retain back-office systems or other assets and contracts used at the corporate level to support multiple broadcast television stations, which they would need to conduct their remaining operations, and which an Acquirer experienced in operating broadcast television stations could supply for itself. The Shared Services Agreement between Gannett and Sander, which Paragraph IV.A of the proposed Final Judgment requires to be terminated with respect to KMOV–TV upon divestiture, is also excluded from the Divestiture Assets.

To ensure that KMOV–TV is operated as an independent competitor after the divestiture, Paragraph IV.A and Section XI of the proposed Final Judgment prohibit Defendants from entering into any agreements during the term of the Final Judgment that create a long-term relationship with the Divestiture Assets after the divestiture is completed. Examples of prohibited agreements include options to repurchase or assign interests in KMOV–TV; agreements to provide financing or guarantees for financing; local marketing agreements, joint sales agreements, or any other cooperative selling arrangements; shared services agreements; and agreements to jointly conduct any business negotiations with the Acquirer with respect to KMOV–TV. Any such agreements that may exist between Gannett and Sander shall be terminated with respect to the KMOV–TV upon divestiture. This shared services prohibition does not preclude agreements limited to helicopter sharing and stock video pooling in the form that are customary in the industry. Gannett and Belo currently have a helicopter sharing agreement in St. Louis, and the Acquirer and Gannett may continue this arrangement after the divestiture. These limited exceptions do not permit Defendants to enter into broader news sharing agreements with respect to KMOV–TV. To the extent the Acquirer needs Defendants to provide any transitional services that facilitate continuous operation of KMOV–TV until the Acquirer can provide such capabilities independently, the United States retains discretion to approve such arrangements.

Defendants are required to take all steps reasonably necessary to accomplish the divestiture quickly and to cooperate with prospective purchasers. Because transferring the KMOV–TV license requires FCC approval, Defendants are specifically required to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. This divestiture of KMOV–TV must occur within 120 calendar days after the filing of the Complaint in this matter (i.e., by April 15, 2013) or 5 days after notice that the Court has entered the Final Judgment, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

If the divestiture does not occur within this prescribed timeframe, the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to sell KMOV–TV. Gannett will pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. The trustee would file monthly reports with the Court and the United States describing efforts to divest KMOV–TV. If the divestiture has not been accomplished after 6 months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, to carry out the purpose of the trust.

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 bringing 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 United States and 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 United States 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 United States 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**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the United States Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Scott A. Scheele, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, United States Department of Justice, 450 5th Street NW., Suite 7000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and Defendants 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

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against consummation of the Transaction. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of broadcast television spot advertising in the St. Louis DMA. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United*

States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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 Microsoft,* 56 F.3d at 1458–62. 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. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he 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 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.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[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.' '' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA 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; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''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 did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial 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.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing 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' '').

[4] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent 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.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 16, 2013

Respectfully submitted,

/s/

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**Attorney of Record*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. GANNETT CO., INC., BELO CORP., and SANDER MEDIA LLC, Defendants.

Case No. 1:13–cv–01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

CERTIFICATE OF SERVICE

I, Anupama Sawkar, hereby certify that on December 16, 2013, I caused copies of the Complaint, Competitive Impact Statement, Hold Separate Stipulation and Order, Proposed Final Judgment, and Plaintiff's Explanation of Consent Decree Procedures to be served upon defendants Gannett Corporation, Inc., Belo Corporation, and Sander Media LLC, by mailing the documents electronically to the duly authorized legal representatives of Defendants as follows:

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Elizabeth A. Allen (DC Bar #121403), Gannett Co., Inc., 7950 Jones Branch Drive, McLean, VA 22107, Telephone: (703) 854–6953, Facsimile: (703) 854–2031, Email: *eaallen@gannett.com.*

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *GANNETT CO., INC., BELO CORP., and SANDER MEDIA LLC,* Defendants.

Case No. 1:13–cv–01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, filed its Complaint on December 16, 2013, and plaintiff and Defendants Gannett Co., Inc. (''Gannett''), Belo Corp. (''Belo''), and Sander Media LLC (''Sander''), by their respective attorneys, have 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 the prompt and certain divestiture of certain rights and assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below 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 below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, and Section 7 of the Clayton Act, as amended, 15 U.S.C. §§ 1 and 18.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means the entity to which the Defendants divest the Divestiture Assets.

B. ''Gannett'' means defendant Gannett Co., Inc., a Delaware corporation, with its headquarters in McLean, Virginia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''Belo'' means defendant Belo Corp., a Delaware corporation, with its headquarters in Dallas, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. ''Sander'' means defendant Sander Media LLC, a Delaware limited liability company, with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, owners, officers, managers, agents, and employees.

E. ''DMA'' means Designated Market Area as defined by A.C. Nielsen Company based upon viewing patterns and used by the *Investing In Television BIA Market Report 2013* (1st edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

F. ''KMOV–TV'' means the CBS-affiliated broadcast television station located in the St. Louis DMA owned by Belo and being sold to Sander as part of the Transaction.

G. ''Divestiture Assets'' means all of the assets, tangible or intangible, used in the operation of KMOV–TV, including, but not limited to, all real property (owned or leased) used in the operation of the station, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of the station; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission (''FCC'') and other government agencies related to that station; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases and commitments and understandings of Belo or Sander relating to the operation of KMOV–TV; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to KMOV–TV; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by Belo or Sander in connection with KMOV–TV, provided, however, that Divestiture Assets does not include physical assets located outside of the St. Louis DMA (e.g., corporate infrastructure), group-wide corporate records, employee benefit plans, group-wide insurance policies, group-wide service contracts, group-wide software licenses and digital systems, the trademarks ''Belo'' or ''Sander,'' or the Shared Services Agreement or other agreements referenced in the Asset Purchase Agreement dated June 12, 2013, and its subsequent amendments.

H. ''Transaction'' means the merger and acquisition contemplated by the Agreement and Plan of Merger, dated June 12, 2013, by and among Belo, Gannett, and Delta Acquisition Corp. and all related agreements, including Sander's acquisition of certain Belo stations and all agreements entered into between Gannett and Sander contemplated by the Asset Purchase Agreement, dated June 12, 2013, and its subsequent amendments.

I. ''Shared Services Agreement'' means the Shared Services Agreement between Gannett and Sander contemplated by the Transaction in substantially the same form as Exhibit C(2) to the Agreement and Plan of Merger dated June 12, 2013, by and among Belo, Gannett, and Delta Acquisition Corp.

III. APPLICABILITY

A. This Final Judgment applies to Gannett, Belo, and Sander as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Defendants' Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to the Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed to divest the Divestiture Assets to an Acquirer acceptable to the United States in its sole discretion, in a manner consistent with this Final Judgment and the Hold Separate Stipulation and Order in this case. Such divestiture shall include all ownership interests and options to acquire or to transfer to others any ownership interests in the Divestiture Assets, and Defendants shall not retain any options to acquire or transfer to others ownership interests in the Divestiture Assets after completing the divestiture required by this Final Judgment. Defendants shall not enter into any agreements to provide financing, guarantees of financing or services to, or to conduct any sales or any business negotiations jointly with, the Acquirer with respect to the Divestiture Assets, and any such agreements that may exist between Gannett and Sander shall be terminated with respect to the Divestiture Assets upon divestiture, except to the extent that the United States in its sole discretion approves in writing any transitional services that may be necessary to facilitate continuous operation of the Divestiture Assets until the Acquirer can provide such capabilities independently. The divestiture pursuant to this section shall take place within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. Defendants shall use their best efforts to accomplish the divestiture ordered by this Final Judgment, including using their best efforts to obtain all necessary FCC approvals, as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ or contract with any employee of any defendant whose primary responsibility relates to the operation or management of the Divestiture Assets.

D. Defendants shall permit prospective acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of KMOV–TV; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire 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 the Acquirer as part of a viable, ongoing commercial television broadcasting business, and the divestiture of such assets will achieve the purposes of this Final Judgment and 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 that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the television broadcasting business in the St. Louis DMA; 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 the Acquirer and Defendants gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If the Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing.

B. If (a) the Defendants have not divested the Divestiture Assets within the time period specified by Paragraph IV(A), or (b) the United States decides in its sole discretion that the Acquirer is likely to be unable to complete the purchase of the Divestiture Assets, upon application of the United States in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

C. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer, and in a manner acceptable to the United States in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of Gannett any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment and contact information for the trustee.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of Gannett, on such terms and conditions as the United States approves, 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 and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment 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 divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, 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 OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. 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, any third party, and the trustee, 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 divestiture in its sole discretion. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer 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 Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. 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 divestiture has been completed under Section IV or V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, 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 Divestiture Assets, 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 Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States 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 Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION OR OTHER PROHIBITED ACTIVITIES

Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirer with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (1) share news helicopters or (2) pool generic video footage that does not include recording a reporter or other on-air talent.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based on the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ______________________

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

[FR Doc. 2013–31182 Filed 12–27–13; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenDaylight Project, Inc.

Notice is hereby given that, on November 13, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), OpenDaylight Project, Inc. (''OpenDaylight'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A10 Networks, San Jose, CA; and Midokura, Lausanne, SWITZERLAND, have been added as parties to this venture.

In addition, Versa Networks, Santa Clara, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenDaylight intends to file additional written notifications disclosing all changes in membership.

On May 23, 2013, OpenDaylight filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 1, 2013 (78 FR 39326).

The last notification was filed with the Department on August 14, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 16, 2013 (78 FR 56939).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–31244 Filed 12–27–13; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on November 22, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carson-Dellosa Publishing, Greensboro, NC; Data Recognition Group, Maple Grove, MN; Nelson Education Ltd., Toronto, Ontario, CANADA; The Northwest Evaluation Association, Portland, OR; Pacific Metrics, Monterey, CA; and The Constitution Foundation dba The Saylor Foundation, Washington, DC, have been added as parties to this venture.

Also, Ucompass.com, Inc., Tallahassee, FL; Tegrity, Santa Clara, CA; Utah State Office of Education, Salt Lake City, UT; Rhode Island Department of Elementary and Secondary Education Office of Instruction, Assessment, and Curriculum, Providence, RI; and State of Michigan Dept. of Education, Bureau of Assessments and Accountability, Lansing, MI, have withdrawn as parties to this venture.

In addition, Department of Education, Employment and Workplace Relations has changed its name to Australian Government Department of Education, Canberra City, AUSTRALIA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on August 16, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 16, 2013 (78 FR 56939).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–31228 Filed 12–27–13; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open-IX Association

Notice is hereby given that, on December 3, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Open-IX Association (''Open-IX'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.