

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

OUTDOOR SYSTEMS, INC.,

Defendant.

Civil No. 1-94-CV-2393-CC
Filed: September 8, 1994

VERIFIED COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

1. The United States brings this antitrust case to block the proposed combination of the two largest outdoor advertising firms in the Atlanta area, Capitol Outdoor Advertising, Inc. ("Capitol") and Outdoor Systems, Inc. ("OSI"). Capitol and OSI are each other's main competitors in the business of renting billboards in the City of Atlanta and Clayton, Cobb, DeKalb, Fulton and Gwinnett Counties.

2. If OSI acquires Capitol, it would dominate the outdoor advertising business in the Atlanta area, controlling over 4,000 billboards, representing about 63% of all billboards in the area.

3. Unless prevented, this combination is likely to lessen substantially competition and result in higher prices, poorer services and the loss of better and more innovative products for customers who want to advertise on billboards in the Atlanta area.

I.

JURISDICTION AND VENUE

4. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and to restrain the violation by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, with respect to the defendant, Outdoor Systems, Inc., because it maintains offices and transacts business in the Northern District of Georgia.

6. OSI regularly contracts with customers outside the State of Georgia for the sale of outdoor advertising in the Atlanta area and regularly receives outdoor advertising materials from outside of Georgia. OSI is engaged in interstate commerce, and its activities are in the flow of, and substantially affect, interstate commerce.

II.

DEFINITIONS

7. "Atlanta area" means all of Clayton, Cobb, DeKalb, Fulton, and Gwinnett Counties in Georgia, including the City of Atlanta.

8. "Capitol" means Capitol Outdoor Acquisition Co., Inc., Capitol Outdoor Advertising, Inc. and Capitol Outdoor Leasing Co., Inc., the outdoor advertising business and assets of which the defendant proposes to acquire.

9. "Outdoor advertising" means all forms of advertising on bulletin billboards, poster panel billboards and 8-sheet billboards.

III.

DEFENDANT

10. Outdoor Systems, Inc. ("OSI") is made a defendant. OSI is a corporation organized and existing under the laws of the state of Delaware. It maintains its principal offices at 2502 North Black Canyon Highway, Phoenix, Arizona. OSI is in the business of providing outdoor advertising services in the Atlanta area. OSI's Atlanta area office is located at 3745 Atlanta Industrial Drive, N.W., Atlanta, Georgia. OSI had outdoor advertising revenues in the Atlanta area of about \$7.4 million in 1993.

PARTY PROPOSED TO BE ACQUIRED

11. Capitol is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal

offices at 732 Ashby Street, N.W., Atlanta, Georgia. Capitol is in the business of providing outdoor advertising services in the Atlanta area. Capitol had outdoor advertising revenues in the Atlanta area of about \$17.1 million in 1992.

IV.

TRADE AND COMMERCE

12. Outdoor advertising is a name given to advertising on standard size billboards. There are several types of billboards. The largest type of billboard is the "bulletin," which comes in two standard sizes: 14' high by 48' long and 20' high by 60' long. If painting is the method of reproduction, paint is applied directly on the surface of the bulletin, which is called a "paint" or a "painted bulletin." If posting is the method of reproduction, a message printed on paper or plastic is applied to the billboard, which is called a "posted bulletin." Bulletin billboards are frequently sold singly to an advertiser at a negotiated rental price that depends primarily on the billboard's location. Bulletins sold in this fashion are called "permanent bulletins" and command, on average, the highest rent of any type of billboard. Bulletins are also rented as part of "rotary" plans by billboard companies. A rotary plan consists of rotating an advertiser's bulletin message to a number of well distributed bulletin locations within a metropolitan area. Usually located adjacent to interstate highways and high traffic arterials, bulletins are typically sold to advertisers for longer contract

periods than other types of billboards because of the high initial expense in painting or posting the advertiser's message or illustration.

13. A second type of standard size billboard is the "poster panel," which comes in one size, 12' high by 25' long, and which is customarily sold in packages called "showings." A "100 showing" of poster panels means that the billboard company will provide enough geographically distributed poster panels to deliver in one day a number of exposure opportunities, as measured by the traffic count past all the poster panels included in the showing, equal to 100% of the population of that particular market. In the Atlanta area, for example, a 100 showing requires approximately 120 poster panels. The advertising message on a poster panel billboard is carried on a printed paper poster. Poster panels are nearly always sold in groups by billboard companies and usually for a shorter contract period than painted bulletin billboards. Poster panels are generally located adjacent to primary arterial roads and busy secondary streets. The rental for each poster panel in a showing averages about one-fifth of the rental for each painted bulletin in a rotary.

14. A third type of standard size billboard is the "8-sheet," sometimes referred to as a "junior billboard." An 8-sheet is approximately 6' wide by 12' long. An advertiser's message on an 8-sheet is usually carried on a printed paper

poster. In the Atlanta area, nearly all 8-sheet locations are in inner city areas, and 8-sheets are usually sold in packages directed to residents of the areas in which they are located. An 8-sheet rents, on average, for less than one-third the rent of a poster panel.

15. Outdoor advertising has prices and characteristics that are distinct from other advertising media. A customer's evaluation of the importance of these characteristics depends upon the type of advertising message the customer wishes to convey and the price the customer is willing to pay to deliver that message. Many customers who use outdoor advertising also advertise in other media, especially radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Because each exposure is necessarily brief, outdoor advertising is most suitable for highly visual, limited information advertising.

16. For most advertising customers, outdoor advertising's particular combination of characteristics makes it a type of advertising medium for which there are no close substitutes. Such customers who want or need to use outdoor advertising would not switch to another advertising medium were outdoor advertising rental fees to increase by a small but significant amount.

17. Outdoor advertising constitutes a line of commerce and a relevant product market for antitrust purposes.

18. The vast majority of the population of the greater Atlanta region lives or works in the Atlanta area and most of that region's commercial activity occurs in the Atlanta area. Advertisers who desire to employ outdoor advertising to reach the Atlanta consumer market have no reasonable substitute for billboards located within the Atlanta area; in particular, a small but significant increase in the price of outdoor advertising in the Atlanta area would not cause advertisers to turn to billboards located in more rural counties outside of the Atlanta area. About 93% of Capitol's and OSI's billboard sites in the greater Atlanta region are located in the Atlanta area. The Atlanta area constitutes a section of the country and relevant geographic market for antitrust purposes.

19 In 1993, in the Atlanta area, total outdoor advertising sales were approximately \$40 million.

20. OSI and Capitol are the only companies that offer a full line of billboards in the Atlanta area. Together, OSI and Capitol control over 63% of all billboards in the Atlanta area. A combined OSI-Capitol entity would control about 4,000 billboards in the Atlanta area, over six times the total of the next largest outdoor advertising company in the Atlanta area and approximately eleven times the total of the third largest.

21. OSI and Capitol compete head-to-head with one another for advertising customers, either directly or through advertising agencies. Outdoor advertising customers have

benefited from OSI and Capitol cutting their prices and improving their support and services in response to competition from one another. If OSI acquires Capitol, outdoor advertising customers in the Atlanta area market would suffer the loss of this head-to-head price, support and service competition.

22. OSI's proposed acquisition of Capitol would raise OSI's market share of the outdoor advertising business in the Atlanta area, based upon the number of billboards, from approximately 24% to approximately 63%. The HHI based upon the number of billboards will increase by approximately 1451 points, to 4829, which is a significant increase in an already concentrated market.

23. After consummation of the proposed transaction, the combined OSI/Capitol could profitably raise the price of billboard rentals due to the elimination of constraining competition. In response to such a price increase, other outdoor advertising firms in the Atlanta area likely would be unable to replace the competition lost through the merger and customers would have few alternative sources for outdoor advertising.

24. Successful new entry into outdoor advertising in the Atlanta area is not easy, due in part to the increasing amount of government regulations limiting billboard construction, the scarcity of suitable billboard sites within the Atlanta area, particularly within the I-285 Perimeter around Atlanta, and the

necessity of obtaining a sufficient number and geographic dispersion of billboard sites in order to be an effective competitor.

V.

VIOLATION ALLEGED

25. Pursuant to an agreement entered on or about July 27, 1994, OSI proposes to acquire for approximately \$40 million the outdoor advertising business of Capitol. The acquisition would include substantially all of the outdoor advertising business and assets of Capitol which are predominantly used in the Atlanta area market area.

26. The effect of OSI's acquisition of Capitol's outdoor advertising business in the Atlanta area may be substantially to lessen competition in outdoor advertising in the Atlanta area in violation of Section 7 of the Clayton Act, in the following ways, among others:

- a. actual and potential competition between OSI and Capitol in outdoor advertising in the Atlanta area will be eliminated; and
- b. competition generally in outdoor advertising in the Atlanta area may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

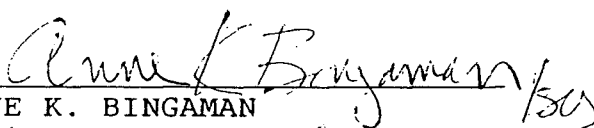
1. That the proposed acquisition of Capitol's outdoor advertising business by OSI be adjudged a violation of Section

7 of the Clayton Act;

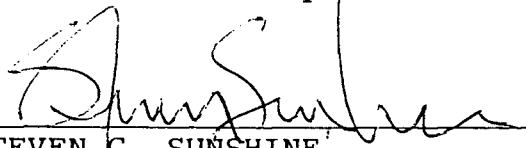
2. That the defendant and all persons acting on the defendant's behalf be permanently enjoined from carrying out any agreement, understanding or plan, the effect of which would be to combine the outdoor advertising businesses of OSI and Capitol;

3. That the plaintiff have such other and further relief as the Court may deem just and proper; and

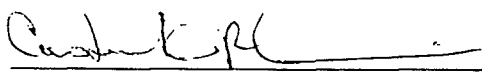
4. That plaintiff recover the costs of this action.


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Dated:

APPENDIX

"HHI" means the Herfindahl-Hirschman Index, a measure of market concentration 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 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

VERIFICATION

I, Justin M. Nicholson, declare:

1. I am an attorney with the United States Department of Justice, Antitrust Division.

2. I verify that the foregoing Verified Complaint for and on behalf of the United States of America was duly prepared under the direction of the Attorney General of the United States; that the facts stated therein have been assembled by authorized employees and counsel for the United States of America; and that the allegations therein are true and correct to the best of my knowledge, information, and belief.

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

Executed at Atlanta, Georgia on September 1994.

Justin M. Nicholson