DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Clear Channel Outdoor Holdings, Inc., et al.

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, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Clear Channel Outdoor Holdings, Inc., Civil Action No. 1:16-cv-02497. On December 22, 2016, the United States filed a Complaint alleging that a proposed transaction between Clear Channel Outdoor Holdings, Inc and Fairway Media Group, LLC would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, resolves the case by requiring Clear Channel and Fairway to divest certain billboards in Atlanta, Georgia, and Indianapolis, Indiana.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.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 Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the Federal Register. Comments should be directed to Owen M. Kendler, Acting Chief, Litigation III

Section, Antitrust Division, Department of Justice, 450 Fifth Street, N.W., Suite 4000, Washington, DC 20530 (telephone: 202-305-8376).

/s/
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 Fifth Street, N.W. Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

CLEAR CHANNEL OUTDOOR HOLDINGS, INC.,
200 East Basse Road
Suite 100
San Antonio, TX 78209,

and

FAIRWAY MEDIA GROUP, LLC,
3801 Capital City Blvd.
Lansing, MI 48906

Defendants.

CASE NO.: 1:16-cv-02497
JUDGE: Randolph D. Moss
FILED: 12/22/2016

COMPLAINT

The United States of America ("Plaintiff"), acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the transaction between Defendants Clear Channel Outdoor Holdings, Inc. ("Clear Channel") and Fairway Media Group, LLC ("Fairway") and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. Clear Channel and Fairway sell outdoor advertising on billboards to local and national customers in numerous metropolitan areas throughout the United States. Among other metropolitan areas, they compete head-to-head to sell advertising on billboards that are located in Indianapolis, Indiana and Atlanta, Georgia (collectively, the "Metropolitan Markets"). Within each of the Metropolitan Markets, Clear Channel and Fairway own and operate billboards that are located in close proximity to each other and therefore constitute attractive competitive alternatives for advertisers that seek to advertise on billboards in those specific areas.

2. On March 3, 2016, Clear Channel and Fairway entered into an asset exchange pursuant to which Clear Channel would acquire certain Fairway billboards located in Atlanta and Fairway would acquire certain Clear Channel billboards located in Indianapolis, along with billboards in other metropolitan areas.

3. If consummated, the proposed transaction would eliminate the substantial head-to-head competition between Clear Channel and Fairway within each of the Metropolitan Markets. Head-to-head competition between Clear Channel and Fairway billboards that are located in close proximity to each other in each of the Metropolitan Markets has benefitted advertisers through lower prices and better services. The proposed transaction threatens to end that competition in these areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

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

5. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. They each own and operate billboards in various locations throughout the United States and sell outdoor advertising in the geographic areas where their billboards are located. Their sale of advertising on billboards has had a substantial effect upon interstate commerce.

7. Defendants have consented to venue and personal jurisdiction in this district. Venue is also proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

III. THE DEFENDANTS AND THE TRANSACTION

8. Clear Channel is a Delaware corporation, with its corporate headquarters in San Antonio, Texas. Clear Channel is one of the largest outdoor advertising companies in the United States. Clear Channel reported consolidated revenues of over $2.8 billion in 2015. As of December 31, 2015, Clear Channel owned or operated more than 650,000 outdoor advertising displays worldwide. It owns and operates billboards in each of the Metropolitan Markets.

9. Fairway is a Delaware limited liability company with its headquarters in Duncan, South Carolina. Fairway owns or operates outdoor advertising displays in fifteen states. Fairway had revenues of approximately $110 million in 2015. Fairway also owns and operates billboards in each of the Metropolitan Markets.

10. Pursuant to an Asset Purchase and Exchange Agreement dated March 3, 2016, Clear Channel and Fairway agreed to exchange billboards in a transaction valued at $150 million. Specifically, the parties agreed that Clear Channel would acquire certain Fairway billboards located in Atlanta and Fairway would acquire certain Clear Channel billboards located in Indianapolis and Sherman/Denison, Texas. Although the Asset Purchase and Exchange Agreement originally provided that Fairway would acquire certain Clear Channel billboards in Rochester, Minnesota, and that Clear Channel would acquire additional Fairway billboards in Atlanta, the parties subsequently amended their agreement to remove the Rochester assets and the additional Atlanta assets from the transaction.

IV. THE RELEVANT MARKETS

11. The relevant markets for purposes of Section 7 of the Clayton Act are the sale of outdoor advertising on billboards to advertisers targeting consumers located in areas no larger than the Metropolitan Markets, and likely smaller areas within each of the Metropolitan Markets where the parties own and operate billboards in close proximity to each other.

12. Clear Channel and Fairway generate revenue from the sale of outdoor advertising to local and national businesses that want to promote their products and services. Outdoor advertising is available in a variety of sizes and forms for advertising campaigns of differing styles and duration. Outdoor advertising sales include selling space on billboards and posters, public transportation, such as subways and buses, and other public spaces, such as bus stops, kiosks, and benches.

13. Outdoor advertising has prices and characteristics that are distinct from other advertising media platforms like radio, television, the Internet, newspapers, and magazines. Outdoor advertising is suitable for highly visual, limited-information advertising, because consumers are exposed to an outdoor advertisement for only a brief period of time as they travel

through specific geographic areas. Outdoor advertisements typically are less expensive and more cost-efficient when compared to other media at reaching an advertiser's target audience. Many advertisers use outdoor advertisements when they want a large number of exposures to consumers at a low cost per exposure. Such advertisers do not view other advertising mediums or platforms as close substitutes.

14. Advertisers often choose a particular form of outdoor advertising over other outdoor advertising forms based upon the purpose of an advertising campaign, the target demographic group, and the geographic area where that campaign is to occur. For this reason, some outdoor advertising forms compete more closely with each other when compared to other outdoor advertising forms. And certain outdoor advertising forms compete more closely with each other depending upon their specific geographic locations.

15. With respect to outdoor advertising forms, billboards compete most closely with other billboards located in the same geographic area. Advertisers select billboards over other outdoor advertising forms based upon a number of factors. These include the size and demographic of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic and commuting patterns of the audience, and other audience characteristics. Additionally, in certain geographic areas, other forms of outdoor advertising are not present.

16. The precise geographic location of a particular billboard is also important to advertisers. Many advertisers need to reach consumers in a particular city, part of a city, metropolitan area, or part of a metropolitan area. They also seek to reach certain demographic categories of consumers within a city or metropolitan area. Consequently, many advertisers select billboards that are located on highways, roads and streets where the vehicle and pedestrian traffic of that target audience is high, or where that traffic is close to the advertiser's commercial

locations. By selecting billboards in these locations, advertisers can ensure that their target audience will frequently view billboards that contain their advertisements. If different firms own billboards that are located in close proximity to each other that would efficiently reach an advertiser's target audience, the advertiser would benefit from the competition among those billboard firms to offer better prices and services.

17. At a minimum, billboard companies could profitably impose a small but significant and non-transitory increase in price ("SSNIP") to those advertisers who view billboards in certain geographic locations either as their sole method of advertising or as a necessary advertising complement to other media, including other outdoor advertising forms. Consequently, for many advertisers who want to advertise on billboards in each of the Metropolitan Markets or in certain smaller areas within each of the Metropolitan Markets, the imposition of a SSNIP would not cause these advertisers to switch some of their advertising to other media, other outdoor advertising forms, or to billboards located outside each area.

18. For all of the above reasons, for purposes of analyzing the competitive effects of the proposed transaction, the relevant product market is outdoor advertising on billboards and the relevant geographic markets are no larger than each of the Metropolitan Markets, and may consist of considerably smaller areas within each of those Metropolitan Markets where the parties own and operate billboards in close proximity to each other.

V. LIKELY ANTICOMPETITIVE EFFECTS

19. Market concentration is often one useful indicator of the likely competitive effects of a transaction. Concentration in each of the Metropolitan Markets and in certain smaller areas within each of the Metropolitan Markets would increase significantly as a result of the proposed transaction.

20. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index ("HHI") is a standard measure of market concentration (defined and explained in Appendix A). The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the *Horizontal Merger Guidelines*.

21. In each of the Metropolitan Markets, and in certain smaller areas within each of the Metropolitan Markets, the market for outdoor advertising on billboards is highly concentrated. The proposed transaction between Clear Channel and Fairway would result in HHIs in excess of 2,500 in each of the Metropolitan Markets and in certain areas within each Metropolitan Market. These post-transaction HHIs, which reflect increases of more than 200 points in each Metropolitan Market and in certain areas within each Metropolitan Market, are well above the 2,500 threshold at which a transaction is presumed likely to enhance market power.

22. In addition to increasing concentration, the proposed transaction will eliminate head-to-head competition between Clear Channel and Fairway by bringing under the control of one firm billboards that are close substitutes, based on their geographic locations, in areas with limited alternatives. In some of the areas within each of the Metropolitan Markets, there are no other competing billboards that would be attractive competitive alternatives to Clear Channel's and Fairway's billboards. In other areas within each of the Metropolitan Markets, there are other competitors present, but the number of billboards or their quality is insufficient to preclude the exercise of market power by Clear Channel or Fairway post-transaction.

23. In each of the Metropolitan Markets, there are significant barriers to entry, including governmental regulations that limit new billboard construction. Therefore, it is unlikely that any new entry or repositioning from existing firms would be sufficient or timely to defeat Clear Channel or Fairway from profitably imposing a SSNIP on their billboards in the Metropolitan Markets and in certain smaller areas within the Metropolitan Markets.

VI. VIOLATION ALLEGED

24. The United States hereby repeats and realleges the allegations of paragraphs 1 through 23 as if fully set forth herein.

25. Clear Channel's proposed transaction with Fairway likely would substantially lessen competition in interstate trade and commerce in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Unless enjoined, the proposed transaction likely would have the following anticompetitive effects, among others:

a) competition in the sale of outdoor advertising on billboards in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets would be substantially lessened;

b) actual and potential competition between Clear Channel and Fairway in the sale of outdoor advertising on billboards in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets would be eliminated; and

c) prices for outdoor advertising on billboards in each of the Metropolitan Market and in certain areas within each of the Metropolitan Markets would likely increase, and the quality of services would likely decline.

VII. REQUEST FOR RELIEF

26. The United States requests:

a) that the Court adjudge the proposed transaction to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b) that the Court permanently enjoin and restrain Defendants from carrying out the proposed transaction, or entering into any other agreement, understanding, or plan by which Clear Channel and Fairway would exchange billboards in each of the Metropolitan Markets;

c) that the Court award the United States the costs of this action; and

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

Dated: December 22, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/
Renata B. Hesse (D.C. Bar #466107)
Acting Assistant Attorney General

/s/
Jonathan B. Sallet
Deputy Assistant Attorney General

/s/
Patricia A. Brink
Director of Civil Enforcement

/s/
Owen M. Kendler
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APPENDIX A

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. CLEAR CHANNEL OUTDOOR HOLDINGS, INC., and FAIRWAY MEDIA GROUP, LLC, *Defendants*.	CASE NO.: 1:16-cv-02497 JUDGE: Randolph D. Moss FILED: 12/22/2016

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

On March 3, 2016, Defendants Clear Channel Outdoor Holdings, Inc. ("Clear Channel") and Fairway Media Group, LLC ("Fairway") entered into an asset exchange pursuant to which Clear Channel would acquire certain Fairway billboards located in Atlanta, Georgia, and Fairway would acquire certain Clear Channel billboards located in Indianapolis, Indiana (collectively Atlanta and Indianapolis are the "Metropolitan Markets"), along with billboards in other metropolitan areas.

The United States filed a civil antitrust Complaint on December 22, 2016, seeking to enjoin the proposed transaction. The Complaint alleges that the proposed transaction likely

would eliminate the substantial head-to-head competition between Clear Channel and Fairway within each of the Metropolitan Markets. Head-to-head competition between Clear Channel and Fairway billboards that are located in close proximity to each other in each of the Metropolitan Markets has benefitted advertisers through lower prices and better services. These likely competitive effects would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order ("Asset Preservation Order") and proposed Final Judgment, which are designed to eliminate the likely anticompetitive effects of the transaction. The proposed Final Judgment, which is explained more fully below, requires Defendants to divest their interests in 57 identified outdoor billboard assets in the Metropolitan Markets to acquirers approved by the United States in a manner that preserves competition in each of those markets.

The Asset Preservation Order requires Defendants to take certain steps to ensure that each of the divested assets continues to be operated as a competitive, economically viable, and ongoing outdoor advertising asset, uninfluenced by the consummation of the transaction so that competition is maintained until the required divestitures occur.

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 Transaction

Clear Channel is a Delaware corporation with its headquarters in San Antonio, Texas.

Clear Channel is one of the largest outdoor advertising companies in the United States.

Fairway is a Delaware limited liability company with its headquarters in Duncan, South Carolina. Fairway owns and operates outdoor advertising displays in fifteen states.

Pursuant to an Asset Purchase and Exchange Agreement dated March 3, 2016, Clear Channel and Fairway agreed to exchange billboards in a transaction valued at $150 million. Specifically, the parties agreed that Clear Channel would acquire certain Fairway billboards located in Atlanta and Fairway would acquire certain Clear Channel billboards located in Indianapolis and Sherman/Denison, Texas. Although the Asset Purchase and Exchange Agreement originally provided that Fairway would acquire certain Clear Channel billboards in Rochester, Minnesota, and that Clear Channel would acquire additional Fairway billboards in Atlanta, the parties subsequently amended their agreement to remove the Rochester assets and additional Atlanta assets from the transaction.

The proposed transaction, as agreed to by Defendants, likely would lessen competition substantially within each of the Metropolitan Markets. This transaction is the subject of the Complaint and proposed Final Judgment filed today by the United States.

B. The Transaction's Likely Anticompetitive Effects

1. The Relevant Markets

The Complaint alleges that the sale of outdoor advertising on billboards to advertisers that seek to target consumers located in geographic areas no larger than each of the Metropolitan Markets, and likely smaller areas within each of those market where the parties own and operate billboards in close proximity to each other, constitute relevant markets under Section 7 of the Clayton Act.

Clear Channel and Fairway sell outdoor advertising to local and national businesses that

seek to promote their products and services to consumers in each of the Metropolitan Markets and in certain smaller areas within each of the Metropolitan Markets.

Outdoor advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media, like radio, television, the Internet, newspapers and magazines. Outdoor advertising is suitable for highly visual, limited-information advertising, because consumers are exposed to an outdoor advertisement for only a brief period of time as they travel through specific geographic areas. Outdoor advertisements typically are less expensive and more cost-efficient when compared to other media at reaching an advertiser's target audience. Many advertisers use outdoor advertisements when they want a large number of exposures to consumers at a low cost per exposure. Such advertisers do not view other advertising mediums or platforms as close substitutes.

Outdoor advertising is available in a variety of sizes and forms for advertising campaigns of differing styles and duration. Outdoor advertising sales include selling space on billboards and posters, public transportation, such as subways and buses, and other public spaces, such as bus stops, kiosks, and benches. Advertisers often choose a particular form of outdoor advertising over other outdoor advertising forms based upon the purpose of an advertising campaign, the target demographic group, and the geographic area where that campaign is to occur. For this reason, some outdoor advertising forms compete more closely with each other when compared to other outdoor advertising forms. And certain outdoor advertising forms compete more closely with each other depending upon their specific geographic locations.

With respect to outdoor advertising forms, billboards compete most closely with other billboards located in the same geographic area. Advertisers select billboards over other outdoor advertising forms based upon a number of factors. These include the size and demographic of

the target audience (individuals most likely to purchase the advertiser's products or services), the traffic and commuting patterns of the audience, and other audience characteristics. Additionally, in certain geographic areas, other forms of outdoor advertising are not present.

The precise geographic location of a particular billboard is also important to advertisers. Many advertisers need to reach consumers in a particular city, part of a city, metropolitan area, or part of a metropolitan area. They also seek to reach certain demographic categories of consumers within a city or metropolitan area. Consequently, many advertisers select billboards that are located on highways, roads and streets where the vehicle and pedestrian traffic of that target audience is high, or where that traffic is close to the advertiser's commercial locations. By selecting billboards in these locations, advertisers can ensure that their target audience will frequently view billboards that contain their advertisements. If different firms own billboards that are located in close proximity to each other that would efficiently reach an advertiser's target audience, the advertiser would benefit from the competition among those billboard firms to offer better prices and services.

At a minimum, billboard companies could profitably impose a small but significant and non-transitory increase in price ("SSNIP") to those advertisers who view billboards in certain geographic locations either as their sole method of advertising or as a necessary advertising complement to other media, including other outdoor advertising forms. Consequently, for many advertisers who want to advertise on billboards in each of the Metropolitan Markets or in certain smaller areas within each of the Metropolitan Markets, the imposition of a SSNIP would not cause these advertisers to switch some of their advertising to other media, other outdoor advertising forms, or to billboards located outside each area.

For all of the above reasons, for purposes of analyzing the competitive effects of the

proposed transaction, the relevant product market is outdoor advertising on billboards and the relevant geographic markets are no larger than each of the Metropolitan Markets, and may consist of considerably smaller areas within each of those Metropolitan Markets where the parties own and operate billboards in close proximity to each other.

2. Harm to Competition within Each of the Metropolitan Markets

The Complaint alleges that the proposed acquisition likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and likely would have the following effects, among others:

a) competition in the sale of outdoor advertising on billboards in each of the Metropolitan Markets and in certain smaller areas within each of the Metropolitan Markets would be substantially lessened;

b) actual and potential competition between Clear Channel and Fairway in the sale of outdoor advertising on billboards in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets would be substantially lessened; and

c) prices for outdoor advertising on billboards in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets would likely increase, and the quality of services would likely decline.

As alleged in the Complaint, in each of the Metropolitan Markets and in certain areas within each of the Metropolitan Markets, the market for outdoor advertising on billboards is highly concentrated and the proposed transaction would substantially increase that concentration.

Using the Herfindahl-Hirschman Index ("HHI"), a standard measure of market concentration, the proposed transaction between Clear Channel and Fairway would result in HHIs in excess of 2,500 in each of the Metropolitan Markets and in certain areas within each

Metropolitan Market. These post-transaction HHIs reflect increases of more than 200 points in each Metropolitan Market and in certain areas within each Metropolitan Market. As a result, the proposed transaction in those Metropolitan Markets is presumed likely to enhance market power under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission.

Moreover, in addition to increasing concentration, the proposed transaction will eliminate head-to-head competition between Clear Channel and Fairway by bringing under the control of one firm billboards that are close substitutes, based on their geographic locations, in areas with limited alternatives. In some of the areas within each of the Metropolitan Markets, there are no other competing billboards that would be attractive competitive alternatives to Clear Channel's and Fairway's billboards. In other areas within each of the Metropolitan Markets, there are other competitors present, but the number of billboards or their quality is insufficient to preclude the exercise of market power by Clear Channel or Fairway post-transaction. Because a significant number of advertisers would likely be unable to reach their desired audiences as effectively unless they advertise on billboards that Clear Channel or Fairway would control after the proposed transaction, those advertisers' bargaining positions would be weaker, and the advertising rates they pay would likely increase.

3. Entry

The Complaint alleges that entry or expansion in outdoor advertising on billboards in each of the Metropolitan Markets would not be timely, likely, or sufficient to prevent any anticompetitive effects. In each of the Metropolitan Markets, there are significant barriers to entry including those due to governmental regulations that limit new billboard construction. Therefore, it is unlikely that any new entry or repositioning from existing firms would be

sufficient or timely to defeat Clear Channel or Fairway from profitably imposing a SSNIP on their billboards in the Metropolitan Markets and certain areas within the Metropolitan Markets.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the likely anticompetitive effects of the transaction in each of the Metropolitan Markets by maintaining the Divestiture Assets as independent, economically viable and competitive. The proposed Final Judgment requires Clear Channel and Fairway to divest the Divestiture Assets to the following Acquirers:

- Divestiture Assets located in the Indianapolis Metropolitan Market to Circle City Outdoor, LLC; and
- Divestiture Assets located in the Atlanta Metropolitan Market to Link Media Georgia, LLC.

The United States has approved each of these Acquirers as suitable divestiture buyers. The United States required Clear Channel and Fairway to identify each Acquirer of a Divestiture Asset in order to provide greater certainty and efficiency in the divestiture process. If, for any reason, Defendants are unable to complete the divestitures to either of these Acquirers, Defendants must divest the remaining Divestiture Assets to one or more alternative Acquirers approved by the United States in its sole discretion.

The Divestiture Assets are defined in Paragraph II.F of the proposed Final Judgment to include all assets set forth in Schedules A and B to the proposed Final Judgment, tangible or intangible, relating to each outdoor advertising display face, including all real property (owned or leased), all licenses, permits and authorizations issued by any governmental organization

relating to the operation of the asset, and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of outdoor advertising on each asset.

To ensure that the Divestiture Assets are operated independently from Clear Channel and Fairway after the divestitures, Section XII of the proposed Final Judgment prohibits Defendants from reacquiring any part of the Divestiture Assets during the term of the Final Judgment and Section VII prohibits Defendants from financing all or any part of the Acquirers' purchase of the Divestiture Assets.

Defendants are required to take all steps reasonably necessary to accomplish the divestitures quickly and to cooperate with prospective purchasers. Pursuant to Paragraph IV.A of the proposed Final Judgment, divestiture of each of the Divestiture Assets must occur within ten calendar days after the Court's signing of the Asset Preservation Order or consummation of the Transaction, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total, and shall notify the Court in such circumstances.

In the event that Defendants do not accomplish all of the divestitures within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to effect any remaining divestitures. If a trustee is appointed, the proposed Final Judgment provides that Clear Channel and Fairway 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 divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States describing his or her efforts to accomplish the divestiture of any remaining

stations. 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, including extending the trust or the term of the trustee's appointment.

Section XI of the proposed Final Judgment requires Defendants to provide advance notification of certain future proposed acquisitions not otherwise subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a. Specifically, Fairway must provide at least thirty days advance written notice to the United States before it acquires, directly or indirectly, any interest in any outdoor advertising asset in the form of a billboard or any outdoor advertising business that owns billboards in the metropolitan statistical areas associated with Rochester, Minnesota and Indianapolis; and Clear Channel must provide at least thirty days advance written notice to the United States before it (a) acquires any assets located in the Atlanta metropolitan statistical area that were included in, but later removed from, the original transaction agreement between Clear Channel and Fairway; and (b) directly or indirectly acquires any outdoor advertising assets in the form of billboards or any interest, including any financial, security, loan, equity or management interest, in any outdoor advertising business that owns billboards in the Atlanta metropolitan statistical area where the assets or interests acquired have annual revenues for the last twelve months in excess of $5 million. Section XI then provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before acquisitions in these geographic areas may be consummated.

The geographic areas that Section XI applies to include one metropolitan area not subject to divestitures: Rochester, Minnesota. Although, as discussed above, Rochester billboard assets

were ultimately excluded from the Defendants' asset swap transaction, given the highly concentrated market for outdoor advertising on billboards in Rochester and the fact that the Rochester billboard assets originally were part of the transaction, the United States sought to ensure that it would have the opportunity to review future acquisitions in that area so that it can seek effective relief, if necessary.

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, 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, if any, will be filed with the Court. In addition, comments will be posted on the Antitrust Division's website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Owen M. Kendler
Acting Chief, Litigation III Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W. Suite 4000
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 the transaction between Clear Channel and Fairway. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of outdoor advertising on billboards in each of the Metropolitan Markets and the affected smaller areas within each Metropolitan Market. 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. US Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*,

No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, 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.").[1]

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) (quoting *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.

[1] 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).

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] 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 US Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *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 US Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would

[2] *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'").

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 US Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *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 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); *see also US Airways*,

38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). 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 Sen. 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.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *US Airways*, 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

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

[3] *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.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (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, 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.").

Dated: December 22, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark A. Merva, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the Complaint, Competitive Impact Statement, Asset Preservation Stipulation and Order, Proposed Final Judgment, and Plaintiff's Explanation of Consent Decree Procedures were served this 22 day of December, 2016, by email, to the following:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. CLEAR CHANNEL OUTDOOR HOLDINGS, INC., and FAIRWAY MEDIA GROUP, LLC, *Defendants*.	CASE NO.: 1:16-cv-02497 JUDGE: Randolph D. Moss FILED: 12/22/2016

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on December 22, 2016, and Defendant Clear Channel Outdoor Holdings, Inc. ("Clear Channel") and Defendant Fairway Media Group, LLC ("Fairway"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree 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 or 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 ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

A. "Clear Channel" means Defendant Clear Channel Outdoor Holdings, Inc., a Delaware corporation headquartered in San Antonio, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Fairway" means Defendant Fairway Media Group, LLC, a Delaware limited liability company headquartered in Duncan, South Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Circle City" means Circle City Outdoor, LLC, a Washington limited liability company headquartered in Spokane, Washington, its successor and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Link Media" means Link Media Georgia, LLC, a Georgia limited liability company headquartered in Wichita, Kansas, its successor and assigns, parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including Link Media Holdings, LLC and Boston Omaha Corporation, and their directors, officers, managers, agents, and employees.

E. "Acquirer" means Circle City, Link Media, or another entity or entities to which Defendants divest the Divestiture Assets.

F. "Atlanta Divestiture Assets" means all of Defendants' interests in the assets set forth in Schedule A, including all assets, tangible or intangible, relating to each outdoor advertising display face, including all real property (owned or leased), all licenses, permits and authorizations issued by any governmental organization relating to the operation of the assets, and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of outdoor advertising on the assets.

G. "Indianapolis Divestiture Assets" means all of Defendants' interests in the assets set forth in Schedule B, including all assets, tangible or intangible, relating to each outdoor advertising display face, including all real property (owned or leased), all licenses, permits and authorizations issued by any governmental organization relating to the operation of the assets, and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of outdoor advertising on the assets.

H. "Divestiture Assets" means the Indianapolis Divestiture Assets and the Atlanta Divestiture Assets.

I. "Transaction" means the Asset Purchase and Exchange Agreement, dated March 3, 2016, between Clear Channel and Fairway.

III. APPLICABILITY

A. This Final Judgment applies to Clear Channel and Fairway, 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 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(s) of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed, within ten (10) calendar days after (i) the Court's signing of the Asset Preservation Stipulation and Order in this matter or (ii) consummation of the Transaction, whichever is later, to divest in a manner consistent with this Final Judgment the Indianapolis Divestiture Assets to Circle City and the Atlanta Divestiture Assets to Link Media or another Acquirer(s) acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Indianapolis Divestiture Assets and the Atlanta Divestiture Assets as expeditiously as possible.

B. In the event that Defendants are attempting to divest the Indianapolis Divestiture Assets to an Acquirer other than Circle City, or the Atlanta Divestiture Assets to an Acquirer other than Link Media:

(1) Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets to be divested; and

(2) Defendants shall inform any person making an inquiry regarding a possible purchase of the relevant Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the relevant Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine; and Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to make inspections of the Divestiture Assets; 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 Acquirers that each Divestiture 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(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each Divestiture 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 divestitures pursuant to Section IV, or by a Divestiture 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 Acquirers as part of a viable, ongoing outdoor advertising business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable, and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the outdoor advertising business; 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 Acquirers and

Defendants gives Defendants the ability unreasonably to raise the costs of the Acquirers, to lower the efficiency of the Acquirers, or otherwise to interfere in the ability of the Acquirers to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets that have not yet been divested.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the relevant Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture 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 Section V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

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

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the relevant Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets subject to sale by the Divestiture Trustee and based on a fee arrangement providing the Divestiture 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. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture 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 Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the relevant divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. Such report 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 Divestiture Trustee shall maintain full records of all efforts made to divest the relevant Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why

the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture 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 Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture 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 Divestiture Trustee, if applicable, additional information concerning the proposed divestiture,

the proposed Acquirer, and any other potential Acquirers. Defendants and the Divestiture 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 Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. 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 Section 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 Section 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. ASSET PRESERVATION

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures 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) calendar 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 the Divestiture Assets 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) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in 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 any Asset Preservation 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 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. NOTIFICATION

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"): (1) Fairway, without providing advance notification to DOJ, shall not directly or indirectly acquire any outdoor advertising assets in the form of billboards or any interest, including any financial, security, loan, equity or management interest, in any outdoor advertising business that owns billboards in the metropolitan statistical areas associated with Rochester, Minnesota and Indianapolis, Indiana; and (2) Clear Channel, without providing advance notification to DOJ, shall not (a) acquire any outdoor advertising assets located in the

Atlanta metropolitan statistical area that were originally included in, but later removed from, the Transaction; and (b) directly or indirectly acquire any outdoor advertising assets in the form of billboards or any interest, including any financial, security, loan, equity or management interest, in any outdoor advertising business that owns billboards in the metropolitan statistical area associated with Atlanta, Georgia where the assets or interests to be acquired have annual revenues for the last twelve months in excess of $5 million.

B. Such notification shall be provided to the DOJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about outdoor advertising. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. 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.

XIV. EXPIRATION OF FINAL JUDGMENT

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

XV. 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 upon the record before the Court, which includes the Competitive Impact Statement and any comments and response 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

SCHEDULE A

Metropolitan Area	Structure ID
Atlanta	FWY184
Atlanta	CCO000059
Atlanta	FWY140
Atlanta	CCO000075
Atlanta	CCO000179
Atlanta	CCO000935
Atlanta	FWY5115
Atlanta	CCO000335
Atlanta	CCO000612
Atlanta	CCO000266
Atlanta	CCO000395
Atlanta	FWY174
Atlanta	CCO000049
Atlanta	CCO000277
Atlanta	CCO000091
Atlanta	CCO000278
Atlanta	CCO001993
Atlanta	CCO000150
Atlanta	CCO001276
Atlanta	CCO001274
Atlanta	CCO000860
Atlanta	CCO000861
Atlanta	CCO000173
Atlanta	CCO000175
Atlanta	FWY244
Atlanta	FWY245
Atlanta	CCO001763
Atlanta	FWY210
Atlanta	CCO001417
Atlanta	CCO001501
Atlanta	CCO000009
Atlanta	FWY220
Atlanta	FWY221
Atlanta	FWY216
Atlanta	CCO000904
Atlanta	CCO000905
Atlanta	FWY148
Atlanta	FWY190
Atlanta	FWY191
Atlanta	FWY194

Atlanta	FWY266
Atlanta	FWY271
Atlanta	CCO000367
Atlanta	CCO001132

SCHEDULE B

Metropolitan Area	Structure ID
Indianapolis	IN2008
Indianapolis	IN2009
Indianapolis	IN2036
Indianapolis	IN2087
Indianapolis	IN2088
Indianapolis	IN2089
Indianapolis	IN2165
Indianapolis	CCO000915
Indianapolis	CCO000665
Indianapolis	CCO000668
Indianapolis	CCO000687
Indianapolis	CCO000318
Indianapolis	CCO000322

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