

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

Civil Action No. 13-CV-1984 (RBW)

GANNETT CO., INC.,
BELL CORP., and
SANDER MEDIA LLC,

Defendants.

ORDER

The United States, the plaintiff in this civil case, filed its complaint on December 16, 2013, contesting as anticompetitive the proposed acquisition by defendant Gannett Co, Inc. (“Gannett”) of defendant Belo Corp. (“Belo”), as well as “the simultaneous implementation of related agreements between Gannett and defendant Sander Holdings Col, a wholly owned subsidiary of Sander Media LLC (“Sander”).” Complaint (“Compl.”) ¶ 1. Currently before the Court is Plaintiff United States of America’s Motion and Memorandum for Entry of the Proposed Final Judgment (“Pl.’s Mot.”) pursuant to the Antitrust Procedures and Penalties Act (the “Tunney Act”), 15 U.S.C. § 16 (2012).

The United States asserted in its complaint that the consummation of the proposed acquisition and implementation of the related agreements (together, the “Transaction”) would constitute a violation of Section Seven of the Clayton Act, 15 U.S.C. § 18 (2012), because “the Transaction’s likely effect would be to increase broadcast television spot advertising prices in the

St. Louis[, Missouri] Designated Market Area.”¹ Pl.’s Mot. at 2. The United States now requests that the Court enter the proposed Final Judgment, “which is designed to eliminate the anticompetitive effects of the Transaction.” Pl.’s Mot. at 2. Specifically, the proposed Final Judgment would require the defendants to divest certain Divestiture Assets, as defined in the proposed Final Judgment. See id. at 3; see also Proposed Final Judgment (“Final J.”) at 3, 5-7. The defendants have agreed to entry of the proposed Final Judgment without further notice to any party or other proceedings. Certificate of Compliance (“Cert. of Compl.”) ¶ 9. After carefully considering all of the relevant submissions by the parties,² the Court concludes for the following reasons that the plaintiff’s motion should be denied without prejudice.

In civil antitrust cases, the Tunney Act permits the United States to propose and courts to enter a final judgment pursuant to 15 U.S.C. § 16. Before a proposed final judgment may be entered, the United States must first satisfy the Act’s threshold notice requirements: the proposed final judgment must be published in the Federal Register; a Competitive Impact Statement detailing the alleged anticompetitive behavior and the government’s proposed remedy must also be published in the Federal Register; summaries of both of these documents must be published for seven days within a two week period in a newspaper in the jurisdiction in which the case is filed; and the United States must accept and respond to public comments during a sixty day window following publication. 15 U.S.C. § 16(b)-(d).

¹ The Complaint states that “the St. Louis Designated Market Area . . . includes parts of Missouri and Illinois.” Compl. at 2. The proposed Final Judgment clarifies that “Designated Market Area [is] defined by A.C. Nielsen Company based upon viewing patterns and use by the Investing In Television BIA Market Report 2013 (1st Edition)” and that such areas “are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.” Proposed Final Judgment (“Final J.”) at 3.

² In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the United States’ Explanation of Consent Decree Procedures; (2) the parties’ Hold Separate Stipulation and Order, adopted as an order of this Court on December 20, 2013; and (3) the Competitive Impact Statement.

The Court's review of the record in this case finds that the United States has technically satisfied the Tunney Act's threshold requirements. On December 16, 2013, the United States filed both the proposed Final Judgment and the Competitive Impact Statement with the Court. Cert. of Compl. ¶ 1. On December 30, 2013, the United States published both documents in the Federal Register, United States v. Gannett Co., Inc., Belo Corp., and Sander Media LLC, 78 Fed. Reg. 79,485, and, beginning on December 23, 2013, the United States published the proposed Final Judgment in The Washington Post for seven consecutive days, Cert. of Compl. ¶ 3. Sixty days were then allowed for public comment on the proposed Final Judgment, and no comments were received during that time. Id. ¶¶ 4-5.

However, the Court finds that additional public notice is appropriate in this case. "Congress, in passing the Tunney Act, intended to prevent 'judicial rubber stamping' of the Justice Department's proposed consent decree[s]." United States v. Microsoft Corp., 56 F.3d 1448, 1458 (D.C. Cir. 1995). To that end, one of the Tunney Act's "main purposes" is to, "through its procedural requirements, . . . grant the public the opportunity to scrutinize and comment upon proposed decrees," which "thereby eliminates excessive secrecy from the process." United States v. Airline Tariff Publ'g Co., 836 F. Supp. 9, 11 (D.D.C. 1993). Among these procedural requirements, the Tunney Act requires that notice be published "in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct." 15 U.S.C. § 16(c).

Here, the District of Columbia is also the district in which the case was filed, and the United States has provided notice in The Washington Post. But the United States' motion represents that "the Transaction's likely effect would be to increase broadcast television spot advertising prices in the St. Louis[, Missouri] Designated Market Area." Pl.'s Mot. at 2

(emphasis added). And while the Court did not previously direct that notice be published in newspapers in any other district, it is troubling that there is no indication that The Washington Post is widely read in or around the St. Louis, Missouri Designated Market Area. Given that the Designated Market Area is, by the United States' own estimation, the area that would be most likely affected by the Transaction, the Court deems it appropriate to require additional public notice of the Competitive Impact Statement and the proposed Final Judgment in that area. And it appearing to the Court that the St. Louis, Missouri Designated Market Area falls within the jurisdiction of the United States District Court for the Eastern District of Missouri, the Court will require that the notice be provided in a newspaper of general circulation within that district. Furthermore, the Court must conclude that entry of the proposed Final Judgment is inappropriate until the United States has provided additional notice as set forth in this order.

Accordingly, it is hereby

ORDERED that the United States' motion to enter final judgment is **DENIED WITHOUT PREJUDICE**. It is further

ORDERED that the United States publish summaries of both the proposed Final Judgment and the Competitive Impact Statement for seven days within a two week period in a newspaper of general circulation within the Eastern District of Missouri and within any other district likely to be significantly affected by the Transaction.

SO ORDERED this 24th day of April, 2014.

REGGIE B. WALTON
United States District Judge