

Both the LA Weekly and New Times LA, which were distributed each Thursday throughout Los Angeles, aggressively competed for readers. The different, and at times opposing, views and positions of the defendants' competing alternative newsweeklies provided readers with alternative viewpoints of important local events affecting social, political, esthetic, and moral issues. Since 1997, the New Times LA garnered numerous journalism awards—including over 30 awards from the Greater Los Angeles Press Club—for its investigative and news reporting.

D. The Illegal Market Allocation Agreement

In July 2002, New Times proposed to Village Voice Media to end their competitive war by agreeing to "swap" markets: New Times would close its New Times LA publication, making Village Voice Media's LA Weekly, in the words of Defendants' executives, the "only alternative weekly in LA." Likewise, Village Voice Media would close its Cleveland Free Times, leaving New Times's Cleveland Scene "the only alternative weekly in Cleveland." By August 12, 2002, Defendants agreed in principle to swap markets. Over the next two months, New Times's and Village Voice Media's senior executives and attorneys negotiated the terms of their contracts to effectuate their proposed market swap. As part of this agreement, Village Voice Media would compensate New Times for withdrawing from the larger Los Angeles market by paying New Times \$9 million in cash. The proposed deal ended all competition between defendants, and created an opportunity for the remaining alternative newsweekly in each market to raise advertising rates.

On October 1, 2002, Village Voice Media's and New Times's senior executives signed two written contracts, each expressly contingent on the other, which sealed their *per se* illegal market allocation arrangement. Village Voice Media paid New Times a net amount of \$9 million in cash at closing (\$11 million to New Times less \$2 million paid to Village Voice Media). The defendants' written contracts did not involve the transfer or integration of any meaningful economic assets associated with those shuttered papers. New Times shifted the New Times LA's accounts receivable, customer lists, and advertising contracts to Village Voice Media, who, in exchange, shifted the Cleveland Free Times's accounts receivable, customer lists, advertising contracts, and street boxes to New Times. These advertisers were already

well known to defendants because each defendant had attempted in the past to sign up the other's advertisers. Moreover, the net assets (primarily the accounts receivable) actually transferred in Los Angeles accounted, according to the defendants' calculations, for only seven percent of their \$11 million sale price in Los Angeles, and 24 percent of their \$2 million sale price in Cleveland.

The defendants' written contracts specifically excluded from the sale most of the assets associated with the actual operations and goodwill of the two shuttered newsweeklies, notably: (i) The advertising personnel, writers, editors, and other employees, (ii) leases, offices, and computer equipment, (iii) back issues and archived materials of the closed publications, including editorial articles, photos, and art work, and (iv) the logos, trade names, trademarks, and copyrights associated with the closed publications. New Times specifically retained the rights to its New Times LA logo or "flag," and Village Voice Media specifically retained the rights to its Cleveland Free Times logo or "flag," but both defendants were contractually prevented from using, or letting anyone else use, these logos.

As defendants acknowledged in their internal documents, the goal of their agreement was to end their competitive war and to give one another a monopoly in each market. Consequently, the defendants' written contracts were designed to ensure that neither defendant would face competition in its "protected" market. To further that end, the defendants' contracts contained:

- Essentially identical "non-competition" clauses in which each defendant agreed not to publish an alternative newsweekly in the other defendant's market for at least ten years;
- Commitments by each defendant not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade;
- Requirements that each Defendant redirect any traffic on its closed weekly's website to the other defendant's website for a period of one year, and to prominently state on its website that its alternative newsweekly was no longer in circulation;
- Provisions to deter any new competitive entry into each defendant's protected market. For example, over the next decade, Village Voice Media agreed not to use, and to prevent anyone else from using, the name "Cleveland Free Times" in connection with any current or future publication in the greater Cleveland area. Similarly, over the next decade, New Times agreed not to use, and to prevent anyone else from using, the name "New Times LA" or any

variant containing "New Times" in connection with any current or future publication in the greater Los Angeles area; and

- Prohibitions on selling or otherwise making available any of the fixed assets associated with each defendant's closed publication to any of its former employees, consultants, or independent contractors in the affected markets.

After defendants executed their written contracts on October 1, 2002, defendant Village Voice Media closed down its Cleveland Free Times alternative newsweekly the next day, leaving New Times's Cleveland Scene the only alternative newsweekly in Cleveland, Ohio. Likewise, on October 2, 2002, New Times informed its New Times LA staff that it was shutting down immediately, leaving Village Voice Media's LA Weekly the only alternative newsweekly distributed throughout the greater Los Angeles area.

E. Competitors' Allocation of Geographic Markets Is an Unreasonable Restraint of Trade That is Per Se Illegal

The Supreme Court has long held that territorial allocation schemes among direct competitors are naked restraints of trade with no purpose except stifling competition. *United States v. Topco Assoc.*, 405 U.S. 596, 608 (1972) (citations omitted); *see also Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211 (1899), *modifying and aff'g* 85 F. 271 (6th Cir. 1898) (Taft, J.); *Citizen Publ'g Co. v. United States*, 394 U.S. 131, 139–40 (1969) (applying *per se* standard where defendants' "market control" agreement comported neither with antitrust laws nor with First Amendment). As recently as 1990, the Supreme Court repeated that such market allocation agreements are classic examples of a *per se* violation of the Sherman Act. *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990).

Accordingly, these market allocation agreements—whereby competitors agree to divide or allocate among themselves certain geographic areas—are condemned as *per se* violations of section one of the Sherman Act. Given their pernicious effect on competition and lack of any redeeming virtue, these market allocation agreements are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the precise harm that they caused or the potential business justification for their use. *Topco*, 405 U.S. at 607 (quoting *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 (1958)). Consequently, competitors cannot agree to split or "swap" markets.