

cooperate with any perspective purchasers.

If defendants do not accomplish the ordered divestitures within the prescribed 30-day time period, then section VII of the proposed final judgment provides that this court will appoint a trustee, selected by the United States, to complete the divestitures.

If a trustee is appointed, the proposed final judgment provides that defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which its is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States, the State Attorney General of Ohio and California, and this Court setting forth the trustee's efforts to accomplish the required divestiture. If at the end of three months after that appointment, the divestiture has not been accomplished, then the trustee, the United States, and the State Attorneys General of Ohio and California will make recommendations to this court, which shall enter such orders as appropriate to carry out the purpose of the final judgment.

In addition to ordering the divestiture of the assets used in the publication of the *Cleveland Free Times* and *New Times LA*, the proposed final judgment places several additional requirements on defendants.

First, Village Voice Media and New Times are enjoined under the proposed final judgment from taking any actions in furtherance of, or required under, both their written and oral market allocation agreements.

Second, for a period of two years commencing from January 27, 2003, Village Voice Media and New Times must allow advertisers that entered into certain written or oral contracts to advertise in, or engage in a promotion with, the LA Weekly or Cleveland Scene, solely at the advertiser's option, the right to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. The advertising or promotion contracts that may be terminated are those entered into beginning October 1, 2002, and for the Cleveland advertisers, ending 30 days after the assets of the Cleveland Free Times are sold, and for the Los Angeles advertisers, 30 days after the assets of the New Times LA are sold.

Third, for a period of five years commencing from January 27, 2003, each defendant cannot directly or indirectly enter into any merger, sale, or

joint venture involving any of its alternative newsweeklies or national advertising networks or acquire any assets of any alternative newsweekly without first notifying the United States 30 days in advance. If within this 30-day period, the United States requests additional information, defendants cannot consummate the proposed transaction or agreement until 20 days after submitting all such additional information.

Fourth, for any employee who was involved in the publication of the Cleveland Free Times or the New Times LA as of October 1, 2002, any non-compete provision imposed by defendants on such employee shall be null and void. Moreover, from the date the complaint was filed, January 27, 2003, to one year from the divestiture of the Cleveland Free Times assets, neither Village Voice Media nor New Times can enforce any other non-compete contractual provisions against any of their former or current employees in the greater Cleveland area. Likewise, from January 27, 2003, to one year from the divestiture of the New Times LA assets, defendants cannot enforce any other non-compete contractual provisions against any of their former or current employees in the greater Los Angeles area.

Fifth, the final judgment enjoins each defendant, and its officers, directors, agents, and employees from entering into, continuing, maintaining, or renewing this, or any other, market or customer allocation agreement, or from engaging in any other conspiracy, agreement, or understanding having a similar purpose or effect, and from adopting or following any practice having a similar purpose or effect.

III. 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 suite in Federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit 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 effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

IV. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed final judgment may be entered by this court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this court's determination that the proposed final judgment is in the public interest.

The APPA provides a period of at least 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 60 days of the date of publication of this competitive impact statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed final judgment at any time prior to entry. The comments and the response of the United States will be filed with this court and published in the **Federal Register**.

Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

The proposed final judgment provides that this court retains jurisdiction over this action, and the parties may apply to this court for any order necessary or appropriate for the modification, interpretation, or enforcement of the final judgment.

V. 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. Given the inherent delays of a full trial and the appeals process, the United States is satisfied that the prompt divestiture of the Cleveland Free Times assets and New Times LA assets, coupled with the other relief contained in the proposed final judgment, will quickly establish, preserve and ensure a viable competitor in the publication of alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Thus, the United States is convinced that the proposed final judgment, once implemented by the court, will present