



## **I. Background**

On December 11, 2012, the United States, along with the State of New York, filed a Complaint in this matter alleging that the formation of Twin America substantially lessened competition in the market for hop-on, hop-off bus tours in New York City in violation of Section 7 of the Clayton Act (15 U.S.C. § 18), and also violated Section 1 of the Sherman Act (15 U.S.C. § 1), Section 340 of the Donnelly Act (N.Y. Gen. Bus. Law § 340), and Section 63(12) of the New York Executive Law (N.Y. Exec. Law § 63(12)).<sup>1</sup> The Complaint sought to remedy harm to competition and disgorge Defendants' ill-gotten gains.

On March 16, 2015, the United States filed the proposed Final Judgment – which is designed to remedy the anticompetitive effects of the proposed merger – the CIS, and a Stipulation and Order Regarding Proposed Final Judgment signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. The proposed Final Judgment requires Defendants to divest all of City Sights' bus stop authorizations in Manhattan to the New York City Department of Transportation ("NYCDOT"), and to pay \$7.5 million in disgorgement to the United States and State of New York. In compliance with the proposed Final Judgment, Defendants relinquished the City Sights bus stop authorizations to NYCDOT on April 30, 2015.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

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<sup>1</sup> The APPA applies to "proposal[s] for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws [of the United States]." 15 U.S.C. § 16(b). Therefore, the proposed Final Judgment's settlement of Plaintiff State of New York's claims under N.Y. Gen. Bus. Law § 340 and N.Y. Exec. Law § 63(12) are not subject to the APPA.

## **II. Compliance with the APPA**

The APPA requires a 60-day period for submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on March 16, 2015; published the proposed Final Judgment and CIS in the *Federal Register* on March 27, 2015, *see* 80 Fed. Reg. 16427 (2015); and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for submission of written comments relating to the proposed Final Judgment, published in the *Washington Post* and *New York Daily News* for seven days, beginning on March 24, 2015 and ending on March 30, 2015. The 60-day public comment period ended on May 29, 2015. On July 28, 2015, the United States filed with the Court its Response to Comment and the one public comment that it received. The United States also posted on the Antitrust Division's website the comment and the Response to Comment. On August 7, 2015, the United States published in the *Federal Register* the comment received, its Response to Comment, and the location on the Antitrust Division's website at which the Response and comment are accessible, *see* 80 Fed. Reg. 47517 (2015).

The Certificate of Compliance filed simultaneously with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

## **III. Standard of Judicial Review**

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16 (e)(1). In

making that determination, the Court may 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 its CIS and its Response to Comment, the United States sets forth the legal standards for determining the public interest under the APPA and now incorporates those statements by reference. The public has had the opportunity to comment on the proposed Final Judgment as required by the APPA. As explained in the CIS and the Response to Comment, entry of the proposed Final Judgment is in the public interest.

#### **IV. Conclusion**

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Comment, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the proposed Final Judgment be entered at this time.

Dated: August 11, 2015

Respectfully submitted,

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/s

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