FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. The Milner Limited Partnership, Aliceville, Alabama, Susan McKinzey Milner, general partner; to acquire voting shares of First National Bancshares of Central Alabama, Inc., and thereby indirectly acquire voting shares of First National Bank of Central Alabama, both of Aliceville, Alabama.

Board of Governors of the Federal Reserve System, March 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3974 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire through its subsidiary, Capitol Development Bancorp Limited IV, Lansing, Michigan, 51 percent of the voting shares of Evansville Commerce Bank, Evansville, Indiana (in organization).

Board of Governors of the Federal Reserve System, March 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3966 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire Waterfield Mortgage Co., Fort Wayne, Indiana, and thereby indirectly acquire Union Federal Bank of Indianapolis, Indianapolis, Indiana, and engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3975 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0008]

Valassis Communications, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 12, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Valassis Communications, File No. 051 0008,'' to facilitate the organization of comments.

A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Geoffrey Green, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2641.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Valassis Communications, Inc. (''Valassis'' or ''Respondent''), a publisher of co-operative free-standing inserts (''FSIs'') with its principal place of business located at 19975 Victor Parkway, Livonia, Michigan 48152. The agreement settles charges that Valassis violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by inviting its only FSI rival to collude so as to eliminate competition. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed order. The analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the complaint are summarized below:

FSIs are multi-page coupon booklets commonly found in Sunday newspapers across the country. FSIs are an efficient means for consumer packaged goods manufacturers and other firms to distribute coupons on a mass scale. For more than a decade, there have been only two U.S. publishers of FSIs: Valassis and News America Marketing (''News America''). On a typical Sunday, both Valassis FSIs and News America FSIs are distributed by hundreds of newspapers to over 50 million households.

A. The FSI Price War

Between 1998 and 2001, Valassis and News America each published approximately 50 percent of FSI pages. In June 2001, Valassis notified its clients of a five percent price increase, bringing Valassis' floor price from $6.00 for a full page per thousand inserts to $6.30. News America did not follow the Valassis price move. As a result, News America captured additional customers and built a substantial market share lead. In February 2002, Valassis abandoned its efforts to increase prices and sought to regain a 50 percent share of FSI pages, leading to FSI prices falling below $5.00 per page by 2004.

B. Valassis Invites its Competitor to Collude

In mid-2004, Valassis determined that its aggressive pursuit of greater market share was no longer serving the company's interests. Company executives developed a new strategy. Valassis decided to communicate to News America an offer to cease competing for News America customers, provided that News America ceased competing for Valassis customers. Valassis intended this offer to enable the firms to raise FSI prices within their respective uncontested domains and to end the FSI price war.

As a publicly traded corporation, Valassis holds a conference call with securities analysts on a quarterly basis. Any person may listen to the call live over the Internet or obtain a transcript of the call from the Valassis Web site. Valassis held its second quarter analyst call on July 22, 2004.[2] Valassis executives were aware that News America representatives would be monitoring the call, and they determined to use this conference call as the vehicle to communicate Valassis' offer to News America. To ensure that News America clearly understood the terms of the Valassis offer, including what Valassis expected in return from

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] A transcript of the earnings conference call is annexed to the complaint as Exhibit A.

News America, the President and Chief Executive Officer of Valassis, Alan Schultz, opened the earnings conference call by proposing the following:

1. Valassis would abandon its 50 percent market share goal. The company would be content to maintain the share (mid-40s percent) that it then held.

2. Valassis would aggressively defend its existing customers and price at whatever level was necessary to retain its existing market share.

3. With regard to customers with expiring contracts with News America, effective July 26, 2004, Valassis would observe a floor price of $6.00 per page and $3.90 per half page. This was the floor price that had been in effect prior to the price war. That meant that for News America's historical customers, Valassis would submit bids at a level substantially above prevailing market prices.

4. With regard to the small number of customers that divide their FSI business between Valassis and News America, Valassis would price its share at whatever level was necessary to retain its historical share of that customer's business. If the customer wanted Valassis to take more than its historical share, however, Valassis would price that portion of the business at the new ($6.00) price floor.

5. As to four bids that Valassis already had outstanding to News America customers, Valassis would honor those bids only until August 1, 2004, and thereafter all News America customers would be quoted at the new higher price.

6. Finally, Valassis would monitor News America's response to this invitation, looking for ''concrete evidence'' of reciprocity in ''short order.'' If News America continued to compete for Valassis customers and market share, then Valassis would return to its previous pricing strategy, and the price war would resume.

According to the allegations of the complaint, Valassis made the foregoing proposal with the intent to facilitate collusion and without a legitimate business purpose. Although the proposal was made in the context of an analyst call, Valassis' statements provided information that would not ordinarily have been disclosed to the securities community, and the company would not have made the statements except in the expectation that its sole competitor would be listening. Far from being normal guidance to its investors or the marketplace with respect to the company's future business plans, Valassis' statements described with precision the terms of its invitation to collude to News America. If the invitation had been accepted by News America, the result likely would have been higher FSI prices and reduced output.[3]

II. Legal Analysis of Invitations To Collude

Invitations to collude have been judged unlawful under Section 2 of the Sherman Act as acts of attempted monopolization,[4] as well as under the Federal wire and mail fraud statutes.[5] In addition, the Commission has entered into consent agreements in several cases alleging that an invitation to collude—though unaccepted by the competitor—violated Section 5 of the FTC Act.[6]

The preceding line of authority rejects the proposition that competition would be adequately protected if antitrust enforcement were directed only at consummated cartel agreements. Several legal and economic justifications support the imposition of liability upon firms that communicate an invitation to collude where acceptance cannot be proven. First, it may be difficult to determine whether a particular solicitation has or has not been accepted. Second, even an unaccepted solicitation may facilitate coordinated interaction by disclosing the solicitor's intentions or preferences. Third, the anti-solicitation doctrine serves as a useful deterrent against conduct that is potentially harmful and that serves no legitimate business purpose.[7]

Previous FTC actions challenging invitations to collude generally have addressed private conversations between the respondent and its competitor.[8] The complaint here alleges that Valassis chose to communicate its offer through a public means. The Commission has concluded that the fact of public communication should not, without more, constitute a defense to an invitation to collude, particularly where market conditions suggest that collusion, if attempted, likely would be successful (here, a durable duopoly). Private negotiation—in a proverbial smoke-filled room—may well be the most efficient route for would-be cartelists wishing to reach an accommodation. But it is clear that anticompetitive coordination also can be arranged through public signals and public communications, including speeches, press releases, trade association meetings and the like.[9] Given the obligation under the securities laws not to make false and misleading statements with regard to material facts, Valassis' invitation to collude, made in the context of a conference call with analysts, may have been viewed by News America as even more credible than a private communication. If such public invitations to collude were per se lawful, then covert invitations to collude would be unnecessary.

In evaluating cartels, antitrust law does not afford immunity to agreements that are brokered in public; courts recognize that a public venue does not necessarily mitigate the threat to competition.[10] The same approach should govern invitations to collude. Liability should depend upon the substance and context of the communication, including issues of intent, likely effect, and business justification, and should not turn solely on the arena in which the communication occurs.

In its earnings call, Valassis communicated to rival News America proposed terms of coordination for the FSI market, a longstanding duopoly, and did so with extraordinary specificity: Valassis would cease competing for News America customers, *provided that* News America likewise ceased competing for Valassis customers. In addition, Valassis proposed that prices should be restored by both firms to the pre-price war level of $6.00 per page and $3.90 per half page per thousand booklets and described how business with shared customers and outstanding bids to News America's customers would be handled. Much of this information would not have been publicly communicated, even to investors and analysts interested in Valassis' business strategy, but for Valassis' effort to induce collusion. Under such limited circumstances, the

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[3] Evidence reviewed in the course of the Commission's investigation did not support a charge that the anticompetitive agreement proposed by Valassis was consummated.

[4] *United States* v. *American Airlines,* 743 F.2d 1114 (5th Cir. 1984), cert. dismissed, 474 U.S. 1001 (1985).

[5] *United States* v. *Ames Sintering Co.,* 927 F.2d 232 (6th Cir. 1990).

[6] MacDermid, Inc.,____ F.T.C.____ (C–3911) (1999); Stone Container Corp., 125 F.T.C. 853 (1998); Precision Moulding Co., 122 F.T.C. 104 (1996); YKK (USA) Inc., 116 F.T.C. 628 (1993); A.E. Clevite, Inc., 116 F.T.C. 389 (1993); Quality Trailer Products Corp., 115 F.T.C. 944 (1992).

[7] *See generally* P. Areeda & H. Hovenkamp, VI Antitrust Law ¶ 1419 (2003).

[8] *In Stone Container Corp.,* 125 F.T.C. 853 (1998), the Commission alleged that an invitation to collude consisting of both public and private communications was illegal.

[9] *See, e.g.*, David F. Lean, Jonathan D. Ogur, and Robert P. Rogers, *Does Collusion Pay * * * Does Antitrust Work?,* 51 Southern Journal of Economics 828, 839 (1985).

[10] *See* FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411 (1990); In re Petroleum Products Antitrust Litig., 906 F.2d 432 (9th Cir. 1990); *San Juan Racing Assoc.* v. *Asociacion de Jinetes, Inc.*, 590 F.2d 31, 32 (1st Cir. 1979).

Commission may challenge an invitation to collude under Section 5 of the FTC Act even where the conduct did not result in competitive harm.

Corporations have many obvious and important reasons for discussing business strategies and financial results with shareholders, securities analysts, and others. For this reason, the Commission is extremely sensitive to the fact that antitrust intervention involving a corporation's public communications must take great care not to unduly chill legitimate speech.[11]

In this case, the public statements made by Valassis went far beyond a legitimate business disclosure and presented substantial danger of competitive harm. The Commission's complaint alleges that Valassis made a strategic decision to use and did use its analyst call to communicate to News America information that was essential for News America to understand how Valassis proposed to divide up the market and how it proposed to transition from competition to coordination. For example, Valassis specified how it proposed to split the business of those customers it shared with News America and explained what its pricing would be with regard to pending bids to four News America customers. Valassis historically had not provided information of this type to the securities community, analysts had no need for the information and did not report it, and Valassis had no legitimate business justification to disclose the information. Valassis would not have disclosed the detailed information except in the expectation that News America would be monitoring the call and except for the purpose of conveying its proposal to News America.

III. The Proposed Consent Order

Valassis has signed a consent agreement containing the proposed consent order. The proposed consent order enjoins Valassis from inviting collusion and from actually entering into or implementing a collusive scheme.

More specifically, Valassis would be enjoined from inviting an FSI competitor to divide markets, to allocate customers, or to fix prices. The proposed consent order also prohibits Valassis from entering into, participating in, implementing, or otherwise facilitating an agreement with any FSI competitor to divide markets, to allocate customers, or to fix prices.

The proposed order would not interfere with Valassis' efforts to negotiate prices with prospective customers, and it would permit Valassis to provide investors with considerable information about company strategy. The proposed order also includes a safe harbor provision permitting Valassis to communicate publicly any information the public disclosure of which is required by the Federal securities laws.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–3965 Filed 3–17–06; 8:45 am]

BILLING CODE 6750–01–P

[11] For example, the Commission would likely not interfere with a public communication that is required by the securities laws. Here, the Commission has been cited to no other instance where a corporation disclosed publicly in securities filings or other fora the detailed descriptions of its future pricing plans and business strategies alleged in this complaint.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0251]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYCAMINE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYCAMINE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to*http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MYCAMINE (micafungin sodium). MYCAMINE is indicated for treatment of patients with esophageal candidiasis and prophylaxis of *Candida* infections in patients undergoing hematopoietic stem cell transplantation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MYCAMINE (U.S. Patent No. 5,376,634) from Astellas Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MYCAMINE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYCAMINE is 2,546 days. Of this time, 1,493 days occurred during the testing phase of the regulatory review period, while 1,053 days occurred during the