ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Simon Property Group, Inc., File No. 101-0061

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Simon Property Group, Inc. ("Simon") that will remedy the anticompetitive effects likely to result from Simon's acquisition of Prime Outlets Acquisition Company, LLC ("Prime"). Under the terms of the proposed Consent Agreement, Simon is required, among other things, to divest either Prime Outlets-Jeffersonville or Simon's Cincinnati Premium Outlets, both located in Southwest Ohio. Additionally, the proposed Consent Agreement prohibits Simon from enforcing any radius restriction with respect to any lease with any tenant in either of the following geographic areas: the Chicago, IL, metropolitan area or Orlando, FL. Finally, from the time when the Order becomes final through January 1, 2015, all tenants in Prime Outlets Orlando, Prime Outlets Orlando Marketplace, and Orlando Premium Outlets may unilaterally opt to extend any existing lease under its existing terms, without penalty, until January 1, 2015.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, and will decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final.

On December 8, 2009, Simon and Prime entered into an acquisition agreement under which Simon would acquire the entire Prime portfolio of outlet centers, consisting of 22 properties. The total value of the transaction was approximately $2.3 billion. On June 28, 2010, the parties amended the agreement to remove Prime's St. Augustine, FL, outlet center and its development projects at Livermore, CA, and Grand Prairie, TX, from the schedule of properties to be acquired by Simon. The acquisition was consummated on August 30, 2010. The Commission's complaint alleges that Simon's acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating an actual, direct, and substantial competitor from certain local markets in the United States.

II. Description of the Parties

Simon, a publicly traded real estate investment trust, is based in Indianapolis, Indiana. Simon is engaged in the business of developing and managing real estate. In particular, Simon develops and operates outlet centers under the Premium Outlets and Mills brands. Simon also develops and operates other real estate platforms.

Prime is a privately held subsidiary, jointly owned by entities controlled by David Lichtenstein and the Lightstone Group, a real estate investment company. Headquartered in Baltimore, MD, Prime is a developer and operator of outlet centers under the Prime Outlets brand.

III. The Complaint

The Commission's complaint alleges that Simon's acquisition of Prime may substantially lessen competition in the provision of retail space at outlet centers in the Southwest Ohio; Chicago, IL; and Orlando, FL, areas in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

The complaint alleges that the relevant product market in which to analyze the effects of the acquisition is retail space at outlet centers. Outlet centers are shopping centers featuring outlet stores, which sell discounted brand name merchandise. By clustering together, outlet tenants derive strong benefits from the network effect of creating a shopping destination, which is strengthened by the presence of tenants with desirable brands.

The complaint also alleges that the relevant geographic markets are local in nature. Competition between owners and developers of outlet centers occurs in local areas where more than one outlet center exists. In local overlap areas, tenants are able to use competition between landlords to get more favorable price and non-price terms in leases. The three geographic areas of concern outlined in the complaint are: (1) Southwest Ohio; (2) the Chicago, IL, metropolitan area; and (3) Orlando, FL.

In Southwest Ohio, Simon owns one outlet center, Cincinnati Premium Outlets in Monroe, OH, and Prime owns one, Prime Outlets-Jeffersonville in Jeffersonville, OH. These are the only outlet centers serving Southwest Ohio. Absent the proposed divestiture of one of these outlet centers, Simon's acquisition of Prime would give Simon a monopoly in the retail space in outlet centers market in Southwest Ohio, increasing the risk that Simon would unilaterally raise rents or reduce non-price benefits provided to tenants.

In the Chicago metropolitan area, the acquisition of Prime's Huntley, IL, and Pleasant Prairie, WI, outlet centers would give Simon ownership of all five outlet centers currently serving the Chicago metropolitan area market. However, there are two other outlet centers planned for this market: Craig Realty Group's planned outlet center in Country Club Hills, IL; and AWE Talisman's planned outlet center in Rosemont, IL. Absent the proposed relief in the Chicago metropolitan area, Simon may be able to prevent or limit this planned entry. Many of the tenants at the current Chicago area outlet centers have radius restrictions in their leases. This prevents or makes it very expensive for these outlet tenants to open additional stores within the Chicago, IL metropolitan area, which has the effect of preventing potential entry because the new developers cannot sign many of the tenants that are subject to radius restrictions.

In Orlando, the acquisition of Prime's outlet centers would give Simon ownership of three of the six outlet centers serving the Orlando area. However, Simon is acquiring the two closest competitors for many tenants. Absent the proposed relief in Orlando, Simon's acquisition of Prime would increase the risk that Simon would unilaterally raise prices or otherwise reduce tenant benefits due to lost competition.

Based on the above facts, the complaint alleges that Simon's acquisition of Prime could eliminate actual, direct, and substantial competition between Simon and Prime in the relevant markets, and increase Simon's ability to unilaterally exercise market power in Southwest Ohio; Chicago; and Orlando.

As stated in the complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. It takes more than two years to develop an outlet center, or to reposition another type of shopping center into an outlet center. In addition, entry is not likely because the relevant markets affected by this transaction are protected by radius restrictions, which prevent or make it very expensive for outlet tenants to open additional stores within a certain proscribed radius of an existing outlet center. This has the effect of preventing potential entry because new developers cannot sign tenants already bound by radius restrictions.

IV. The Terms of the Proposed Consent Agreement

The proposed Consent Agreement will remedy the likely competitive effects resulting from Simon's acquisition of Prime's outlet centers in each of the relevant markets discussed above. Pursuant to the proposed Consent Agreement, Simon will divest one outlet center in Southwest Ohio. This will remedy the competitive harm in that market by ensuring that Simon will not have a monopoly. The proposed Consent Agreement also requires Simon to waive enforcement of radius restrictions in the Chicago metropolitan area, which will eliminate a significant entry barrier that otherwise would likely preclude entry in Chicago. Finally, in Orlando, the proposed Consent Agreement requires Simon to waive enforcement of radius restrictions, which will make new entry substantially easier. Additionally, the proposed Consent Agreement requires Simon to provide tenants at all three outlet centers it will own in Orlando with the unilateral right to extend existing leases under existing lease terms up to January 1, 2015, with no penalty.

Finally, the proposed Consent Agreement requires Simon to maintain the Southwest Ohio outlet centers at full economic viability, marketability, and competitiveness until the divestiture of one of the outlet centers to a Commission-approved acquirer is complete.

V. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final. By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the proposed Consent Agreement, including the proposed divestiture, and to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement, nor to modify the terms of the proposed Consent Agreement in any way.