



# Department of Justice

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## **JUSTICE DEPARTMENT AND NEW YORK ATTORNEY GENERAL SECURE SETTLEMENT WITH NEW YORK CITY TOUR BUS JOINT VENTURE**

### ***Settlement Remedies Harm to Competition in New York City Hop-On, Hop-Off Bus Tour Market and Requires Defendants to Disgorge \$7.5 Million in Illegal Profits***

WASHINGTON – The Department of Justice and New York State Attorney General today announced that they have reached a settlement with Coach USA Inc., City Sights LLC and their joint venture, Twin America LLC, to remedy competitive concerns in the New York City hop-on, hop-off bus tour market. The settlement requires the defendants to relinquish all of City Sights’s Manhattan bus stop authorizations and disgorge \$7.5 million in ill-gotten profits that the defendants obtained by operating Twin America in violation of the antitrust laws.

The settlement resolves a lawsuit filed on Dec. 11, 2012, in the U.S. District Court of the Southern District of New York alleging that the March 2009 formation of Twin America violated the antitrust laws and resulted in higher prices for hop-on, hop-off bus tours in New York City. Trial had been set for Feb. 23, 2015 before the parties adjourned the trial date to facilitate settlement discussions. Today’s settlement, if approved by the court, would resolve the claims alleged in the complaint filed in this case.

“The formation of Twin America gave Coach and City Sights an unlawful monopoly over the New York City hop-on, hop-off bus tour market and allowed them to immediately increase prices to consumers,” said Assistant Attorney General Bill Baer of the Department of Justice’s Antitrust Division. “As a result of the joint efforts of the Antitrust Division and the New York Attorney General, Coach and City Sights will forfeit key bus stop authorizations throughout Manhattan to restore competition and surrender illegal profits they obtained from violating the antitrust laws.”

“By eliminating the competition between them, the largest operators of New York City’s iconic double-decker tour buses were able to raise prices and deprive city visitors of the benefits of a free and fair market,” said New York Attorney General Eric T. Schneiderman. “This settlement allows competition to thrive once again, and ensures that these companies did not profit from operating an unlawful and anticompetitive joint venture. I thank the Justice Department’s Antitrust Division for partnering with my office to achieve this resolution for consumers in New York.”

As alleged in the complaint, prior to the formation of Twin America, Coach, the long-standing market leader through its “Gray Line New York” brand, and City Sights, a firm that launched the “CitySights NY” brand in 2005, accounted for approximately 99 percent of the hop-on, hop-off bus tour market in New York City. Between 2005 and early 2009, the two companies engaged in vigorous head-to-head competition on price and product offerings that directly benefited consumers.

The formation of Twin America ended competition between Coach and City Sights and enabled them to increase hop-on, hop-off bus tour prices by approximately 10 percent. According to the complaint, Coach and its corporate parent, Stagecoach Group PLC, had long assumed that combining with Coach’s only meaningful competitor would allow the merged firm to raise prices and communicated this assumption to City Sights during joint venture negotiations. In early 2009, over a period of approximately two months, Coach and City Sights implemented the price increases and executed the joint venture. The joint venture continues to operate both the Gray Line New York and CitySights NY brands today.

For more than three years following Twin America’s formation, there was no new entry or expansion in the market, and Coach and City Sights sustained the 2009 price increases. Although some firms have entered since 2012, they have been unable to obtain bus stop authorizations from the New York City Department of Transportation (NYCDOT) at or sufficiently close to top attractions and neighborhoods to meaningfully compete with Twin America. NYCDOT is the city agency in charge of managing bus stop authorizations, which are required for hop-on, hop-off operators to load and unload passengers. Both Coach and City Sights hold large portfolios of bus stop authorizations covering virtually all of Manhattan’s key attractions that the firms received from the NYCDOT years ago before many locations were at capacity. The formation of Twin America gave them a dominant share of the competitively-meaningful bus stop authorizations in Manhattan.

The proposed settlement requires Twin America to divest all of City Sights’ Manhattan bus stop authorizations by relinquishing them to the NYCDOT. The relinquished bus stop authorizations include highly-coveted locations such as the areas surrounding Times Square, the Empire State Building and Battery Park, where rival firms have been chronically unable to obtain competitive bus stop authorizations. By increasing the NYCDOT’s inventory of bus stops and freeing up capacity at approximately 50 locations throughout Manhattan, the settlement will significantly ease the most intractable barrier to rivals being able to meaningfully compete with Twin America. The defendants will continue to hold Gray Line New York’s bus stop authorizations for their own hop-on, hop-off service.

The settlement also requires the defendants to disgorge \$7.5 million in profits they obtained from the operation of their illegal joint venture. This amount is in addition to \$19 million that the defendants had already agreed to pay to a class of consumers to settle related private litigation brought after the filing of the government’s complaint. The United States and the New York Attorney General determined that the defendants earned profits in excess of \$19 million from their unlawful monopoly and that disgorgement was particularly appropriate on the facts of this case – a consummated merger involving an anticompetitive price increase and deliberate attempts to evade antitrust enforcement. The payment of \$7.5 million in disgorgement

will deprive the defendants of ill-gotten profits they retained even after the class settlement and deter future antitrust law violations.

In a separate but related filing, Coach USA has further agreed to reimburse the United States \$250,000 in attorney's fees and costs to resolve claims that the Coach defendants spoliated evidence and failed to meet their document preservation obligations.

The settlement of the lawsuit also requires Coach and Twin America to establish antitrust training programs and that the defendants provide the government with advance notice of any future acquisition in the New York City hop-on hop-off bus tour market that is not otherwise reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the HSR Act).

Coach USA is a Delaware corporation with its principal place of business in Paramus, New Jersey. Coach offers scheduled bus routes, motorcoach tours, charters and city sightseeing tours in the United States and Canada. Coach is a wholly-owned subsidiary of Stagecoach Group PLC, a leading international public transport company based in the United Kingdom.

City Sights is a New York limited liability company with its principal place of business in New York City. City Sights is part of the New York Airport Service group of companies, one of New York City's largest operators of ground transportation, tour and sightseeing services for leisure and corporate markets.

Twin America is a Delaware limited liability company with its principal place of business in New York City.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, N.W., Suite 8000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court of the Southern District of New York may enter the proposed final judgment upon finding that it is in the public interest.

## **BACKGROUND**

The transaction forming Twin America was not required to be reported under the HSR Act, and the department did not learn about the joint venture until after its consummation. The State of New York was similarly unaware of Twin America at the time of its formation, but began to investigate shortly thereafter and issued subpoenas in the summer of 2009.

After receiving the subpoenas, the defendants delayed the State of New York's antitrust investigation by belatedly filing the transaction with the federal Surface Transportation Board (STB) and asserting that the STB had exclusive jurisdiction. The STB rejected the joint venture in early 2011 as not in the "public interest" and affirmed its ruling in early 2012, directing the defendants to either dissolve Twin America or terminate minimal interstate operations that provided the basis for STB jurisdiction. The defendants chose the latter, which removed the

matter from STB jurisdiction but did nothing to address the joint venture's anticompetitive effects in New York City. The department and New York State Attorney General's lawsuit followed in December 2012.

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