

NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**MANHATTAN JUDGE REJECTS CHALLENGES
TO STREET FURNITURE FRANCHISE;
APPROVES FRANCHISE AGREEMENT IN ALL ASPECTS**

***COURT UPHOLDS AGREEMENT BETWEEN CITY AND CEMUSA, INC. TO BRING NEW BUS SHELTERS,
NEWSSTANDS, TOILETS AND OTHER AMENITIES TO PUBLIC SPACES, PLUS SUBSTANTIAL REVENUES TO
CITY***

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New York, December 19, 2006 – Supreme Court Justice William A. Wetzel ruled today that the Franchise Agreement awarded by The City of New York to Cemusa, Inc. for the installation and maintenance of bus shelters, self-cleaning automatic public toilets, newsstands and additional public service structures is in all respects lawful and proper. The Agreement was entered into following approval of the franchise on May 15, 2006, after a May 11, 2006 public hearing, by the City's Franchise and Concession Review Committee (FCRC) – consisting of the Mayor, an additional mayoral designee, the Comptroller, the Office of Management and Budget, the Manhattan Borough President and the Corporation Counsel – by a unanimous six-to-zero vote. By requirements of the New York City Charter, the award of a franchise requires a minimum of five votes of the FCRC.

In so ruling, the Court rejected legal challenges brought by two losing proposers, Texas-based Clear Channel Adshel, Inc. and NBCDeCaux, LLC, a company managed and 70%-owned by JCDecaux, a French street furniture company. Justice Wetzel found no merit to petitioners' claims that the City had favored Cemusa. Rather, the Judge found that all proposers were treated fairly, observing that:

In conclusion, this Court determines that the franchise award to Cemusa was neither arbitrary nor capricious, and that there was a rational basis for the determination. DOT treated all parties fairly and equally and made an effort to gain the maximum input from other city agencies and interested parties. For this, the City is to be commended. The hallmark of the process was its fairness and its devotion to obtaining the best possible terms for the city.

In rejecting the claims of favoritism, the Court also noted that communications between the City's Department of Transportation (NYCDOT) and Cemusa relating to its proposal were permitted by the terms of the publicly issued Request for Proposals and were no different than similar communications between NYCDOT and other proposers. The Court also rejected a claim that Deputy Mayor Daniel Doctoroff and former Marketing Development Corporation (MDC) head Joseph Perillo had sought to steer the contract to Cemusa, ruling that there was no evidentiary basis for these claims – which were contradicted by the City's sworn statements.

Under the terms of the Franchise Agreement, Cemusa will provide a minimum of 3,300 new bus shelters, approximately 330 new newsstands and up to 20 automatic public toilets. These structures, designed by the prominent architectural firm of Nicholas Grimshaw Partners and unanimously approved by the Municipal Arts Commission on July 24, 2006, are all to be made of stainless steel, anodized aluminum, and tempered glass, and will provide a distinctive, modern, yet neutral effect throughout the City as

distinguished from the dissonance and largely uninspired design of existing structures. In addition, the City will have the right to obtain additional new public service structures, including trash receptacles, multi-rack news racks and information/computer kiosks.

Cemusa will pay the City cash and other consideration well in excess of one billion dollars in value over the 20-year life of the Franchise Agreement for the right to sell advertising space on the franchise structures. Over the contract term, in addition to receiving \$999 million in cash and over \$396 million in free advertising space to promote the City in Cemusa's other markets, which include about a dozen countries in Europe and Latin America, the City, which will pay nothing for construction and maintenance of the bus shelters, newsstands, and toilets, also will receive 22.5 percent of the advertising panels available at any given time to promote the City and for public service messages.

The selection of Cemusa came after an intensive evaluation of the proposals submitted by five interested companies. Each proposal included detailed technical plans, financial information and scale models and drawings. The proposals were evaluated by a selection committee made up of seven City officials of diverse backgrounds and substantial experience. The evaluation period lasted ten months and included extensive interviews with each proposer.

Iris Weinshall, Commissioner of NYCDOT, which managed the extensive competition, stated: "We are very pleased with the Court's ruling today. The Franchise Agreement will provide attractive, desirable, much needed and long awaited amenities which will enhance the City's streetscape and serve the convenience of the public, while also endowing the City with substantial non-tax revenues." We are gratified that the Court recognized that the City treated all bidders fairly and that the selection of Cemusa was based on the strength of its proposal, as it should be."

Corporation Counsel Michael A. Cardozo stated: "The City justifiably can be proud of the thoroughness of the competitive process and the substantial benefits the City will receive from the Franchise Agreement. We are gratified that the Court shared our view that the competition for the franchise was conducted appropriately and the City's award of the Franchise Agreement was in all respects lawful and proper.

The matters were argued before Justice Wetzel on December 5, 2006. Deputy Chief Jonathan S. Becker of the City Law Department's Commercial & Real Estate Litigation Division (C&RE) argued on behalf of the municipal respondents, which, in addition to the City and the FCRC and its members, included the Department of City Planning (DCP), the New York City Economic Development Corporation, MDC and NYCDOT. C&RE Chief Eric A. Rundbaken and C&RE Senior Counsels Susan M. Shapiro and Gary Rosenthal also represented the municipal respondents. The proceedings involved the work of many others, with additional input from Executive Staff member Lawrence S. Kahn, Bruce Regal and Krishna Jayaram of the Economic Development Division, Sharon Cantor and Caroline Silk of the Contracts and Real Estate Division, Spencer Fisher of the Legal Counsel Division, General Counsel Philip Damashek, Deputy General Counsel Susan Rogerson-Pondish, former Deputy Commissioner Howard Altschuler, Assistant Commissioner for Street Furniture Kerry-Gould-Schmit and N. Patricia Browne, Esq. of NYCDOT, General Counsel Bryan Grimaldi of MDC and General Counsel David Karnovsky of DCP. C&RE Paralegals Vedeanand (Nick) Brijmohan, Liliya Raskeyvich and Michael Fisher also worked on the matter. Additional assistance was provided by a college intern, Spencer Pepper of Cornell University.

Anthony P. Coles, who argued, Howard S. Schrader, Robert Gold and Peter D. Sharp of DLA Piper Rudnick Gray Cary US LLP represented Co-Respondent Cemusa. Randy M. Mastro argued on behalf of Petitioner Clear Channel, which was represented by Gibson, Dunn & Crutcher LLP. Petitioner NBCDecaux was represented by Edward C. Wallace, who argued, Stephen L. Saxl, Simon T. Miller, and William A. Wargo of Greenberg Traurig, LLP.

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