

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Gannett Co., Inc., WREX-TV, Inc., and Rockford Newspapers, Inc., U.S. District Court, N.D. Illinois, 1968 Trade Cases ¶72,644, (Jan. 6, 1969)

United States v. Gannett Co., Inc., WREX-TV, Inc., and Rockford Newspapers, Inc.

1968 Trade Cases ¶72,644. U.S. District Court, N.D. Illinois. Civil Action No. 68 C 48. Entered January 6, 1969. Case No. 2029 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions and Mergers—Newspapers—Acquisition by Television Interests—Divestiture.—The owner of the dominant television station in a metropolitan area was required by a consent decree to divest either an acquainted publisher of the two major newspapers in the area or the television station, pursuant to settlement of antimerger charges against the acquisition of the newspapers. Anticompetitive effects alleged were the elimination of competition between the newspapers and the television station and increased concentration in the sale of advertising and the dissemination of news and advertising by local mass media.

For the plaintiff: Edwin M. Zimmerman, Asst. Atty. Gen., Baddia J. Rashid, and William D. Kilgore, Jr., Attys., Department of Justice, Washington, D. C; Robert L. Eisen, Atty., Dept. of Justice, Chicago, Ill.

For the defendants: Nixon, Hargrave, Devans & Doyle, by Arthur L. Stern.

Final Judgment

AUSTIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 5, 1968; and defendants having filed their answers denying the substantive allegations of such complaint, and the parties by their respective attorneys having consented to, the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party with respect to any such issue;

Now, Therefore, without trial or adjudication of any issue of fact or law, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief may be granted against said defendants under Section 7 of the Act of Congress of October 15, 1914, (15 U. S. C. 18) entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;

(B) "Gannett" shall mean Gannett Co., Inc. and its subsidiaries and affiliates;

(C) "WREX" shall mean WREX-TV, Inc., as acquired by Gannett in 1963, together with all additions and accretions thereto since such acquisition;

(D) "Rockford Newspapers" shall mean Rockford Newspapers, Inc., as acquired by Gannett in 1967, together with all additions and accretions thereto since such acquisition;

(E) "Rockford metropolitan area" shall mean Winnebago and Boone Counties, Illinois.

III

[Applicability]

The provisions of this Final Judgment applicable to Gannett shall apply also to each of its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[Divestiture]

Gannett is ordered and directed to divest itself of all of its equity interest in either WREX or Rockford Newspapers, at defendant Gannett's option, within eighteen (18) months from the date of this Final Judgment in accordance with the following plan for divestiture:

(A) Until the time of such divestiture, Gannett shall continue to operate the company to be divested, as it has in the past, as a single, strong and viable company. The entire business of the company to be divested shall be divested by a good-faith, absolute and unqualified sale to a person who

(1) Does not own, control, or have any material interest in any newspaper, radio station or television station serving the Rockford metropolitan area;

(2) Is not eligible as a purchaser by virtue of Section V of this Final Judgment;

(3) Does not control, or is not controlled by, and is not under common control with, any person who would be ineligible as a purchaser under subsections (1) or (2) above.

(B) Gannett shall furnish to bona fide prospective purchasers all appropriate information regarding the company to be divested and shall permit them to make such inspection of the facilities and operations of such company as is reasonably necessary for a prospective purchaser to properly advise himself.

(C) At least sixty (60) days in advance of the closing date specified in any contract for the sale of the company to be divested, Gannett shall supply the plaintiff with the name and address of the proposed purchaser and with the complete details concerning the terms and conditions of the proposed sale, together with any other pertinent information requested by the plaintiff. At the same time, Gannett shall make known to the plaintiff the names and addresses of all other persons who have made an offer of purchase, together with the terms and conditions thereof. Not more than thirty (30) days after its receipt of the name and address of the proposed purchaser, plaintiff shall advise Gannett and the Court of any objection it may have to the consummation of the proposed sale. If no such objection is made known to Gannett and to the Court within such period, plaintiff shall be deemed to have approved such sale. If such an objection is made by plaintiff, then the proposed sale shall not be consummated unless approved by the Court or unless plaintiff's objection is withdrawn.

(D) If divestiture is accomplished in whole or in part by an exchange of the stock of the divested company, or its assets, for the stock of the person who will thereafter own or control the divested company, Gannett is enjoined from voting such stock and Gannett will divest itself of such stock within three (3) years from its acquisition either by way of public offering or to a person or persons who would otherwise have been eligible under this Final Judgment to have purchased the stock of the divested company. In the event such divestiture of stock is not accomplished by a public offering, Gannett shall notify plaintiff of the name of the prospective purchaser at least thirty (30) days in advance of the sale of the shares.

(E) No divestiture under this Final Judgment shall be upon terms and conditions or to a person not first approved by the plaintiff, or failing such approval, by the Court.

V

[Disposition of Stock]

Gannett is enjoined and restrained from knowingly disposing of any shares of stock in the divested company or any of its assets to any person

- (A) Who is an officer or director of Gannett, or who is related to anyone holding such office;
- (B) In which Gannett owns any material amount of capital stock or any material financial interest except as may arise out of divestiture under Paragraph IV of this Final Judgment; or
- (C) Beneficially owning or having an unrestricted discretionary power to vote common stock of Gannett in excess of five (5) percent of the total shares outstanding.

VI

[Ineligibility of Purchaser]

If for any reason, the purchaser of the divested company under this Final Judgment should become ineligible or unable to complete the contract for the purchase of the divested company, defendant Gannett shall regain control over said company, advertise it for sale and sell it pursuant to the terms of this Final Judgment.

VII

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Gannett made to its principal office, be permitted, subject to any legally recognized privilege:

1. Access during the office hours of Gannett to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of Gannett which relate to any matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of Gannett, but without restraint or interference from it, to interview officers, directors, agents or employees of Gannett, who may have counsel present, regarding any such matters.

(B) Upon such written request, Gannett shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested; provided, however, that no information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings in which the United States of America is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[Jurisdiction Retained]

Jurisdiction of this cause is retained by this Court for the purpose of enabling either party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification, construction, or carrying out of the provisions of this Final Judgment, for the enforcement of compliance therewith and the punishment of violations thereof.