

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Citizen Publishing Co., Star Publishing Co., Tucson Newspapers, Inc., Arden Publishing Co., and William A. Small, Jr., U.S. District Court, D. Arizona, 1970 Trade Cases ¶73,094, (Jan. 26, 1970)**

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United States v. Citizen Publishing Co., Star Publishing Co., Tucson Newspapers, Inc., Arden Publishing Co., and William A. Small, Jr.

1970 Trade Cases ¶73,094. U.S. District Court, D. Arizona No. Civil-1969 Tuc. Judgment and decree filed January 31, 1968. Amended order filed January 26, 1970. Case No. 1843 in the Antitrust Division of the Department of Justice.

**Clayton and Sherman Acts Acquisition—Joint Operating Agreement—Newspapers—Divestiture—Revised Agreement—Litigated Judgment.**—A Tucson, Arizona newspaper and an individual, found to have illegally acquired a nearby competitor and to have engaged in illegal joint operations with it were required by a litigated decree to divest themselves of the acquired paper within 21 months, either by the acquiring firm selling the assets of the acquired firm, or the individual disposing of all of his stock of the acquired firm, and to submit a revised operating plan. The divested newspaper is to continue publishing under ownership wholly free from any interests or control of the defendants, and the joint operating agreement was modified to eliminate price fixing, profit pooling and market allocations. Joint operations would be limited.

For the plaintiff: Charles D. Mahaffie, Jr., Gerald A. Connell, Antitrust Div., Dept. of Justice, Washington, D. C.

For the defendants: Pillsbury, Madison and Sutro, by Richard J. MacLaury, Charles 13. Renfrew and Harvey D. Hinman, San Francisco, Cal., Robertson and Fickett, by John L. Donahue, Jr., Tucson, Ariz., and Ryley, Carlock and Ralston, by George Read Carlock, Phoenix, Ariz.

### **Judgment and Decree**

WALSH, D. J.: The Court having this day made and entered its Findings of Fact and Conclusions of Law herein, it is now Ordered, Adjudged, and Decreed:

1. The "Operating Agreement" entered into between Citizen Publishing Company and Star Publishing Company, which became effective on July 1, 1940, provides for price fixing, profit pooling, and market allocations by the parties to the Agreement; and such provisions of the "Operating Agreement" are illegal per se under [Section 1 of the Sherman Act](#), 15 U. S. C., §1.
2. The acquisition of all of the stock of Star Publishing Company by defendant Arden Publishing Company and the subsequent acquisition and ownership by defendant Arden Publishing Company of all of the assets of Star Publishing Company were and are in violation of [Section 7 of the Clayton Act](#), 15 U. S. C., § 18.
3. Defendants Arden Publishing Company and William A. Small, Jr., are directed to divest themselves of The Arizona Daily Star, either by defendant Arden Publishing Company selling the assets acquired by it from Star Publishing Company or by defendant William A. Small, Jr., selling and disposing of all of the stock of Arden Publishing Company.
4. Defendants, other than Star Publishing Company, shall within ninety (90) days from date of this judgment and decree lodge with the Court and serve upon plaintiff a plan which will provide for such divestiture and for the continuation of The Arizona Daily Star under ownership wholly free from any interests of or control by said defendants, or any of them. Such plan shall provide, as well, for the modification of the "Operating Agreement" so as to eliminate price fixing, market allocations, and profit pooling.
5. Defendants, and each of them, and each of their directors, officers, agents, and employees, and all persons acting for them, are hereby restrained and enjoined, effective upon divestiture, from in any manner or by any

means fixing prices, or pooling profits, or allocating markets in the business of publishing daily newspapers of general circulation in Pima County, Arizona.

6. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to apply to the Court at any time for such other orders and directions as may be necessary or appropriate in relation to the construction or carrying out of this judgment and decree, for the amendment or modification of any provisions hereof, or the enforcement of compliance therewith.

#### **Amended Order for Modification of Operating Agreement and Decree of Divestiture**

##### *Preliminary Statement.*

WALSH, D. J.: This cause came on for trial before this Court on April 5, 1966. The Court filed its findings of fact and conclusions of law, and entered its judgment and decree herein, on January 31, 1968.

The Court's judgment and decree ordered defendants Arden Publishing Company and William A. Small, Jr., to divest themselves of The Arizona Daily Star, either by defendant Arden Publishing Company selling the assets acquired by it from Star Publishing Company or by defendant William A. Small, Jr., selling and disposing of all of the stock of Arden Publishing Company.

The judgment and decree further ordered defendants, other than Star Publishing Company, to lodge with the Court and serve upon plaintiff a plan which would provide for such divestiture and for the continuation of The Arizona Daily Star under ownership wholly free from any interests of or control by said defendants, or any of them. The Court further ordered that such plan should provide, as well, for the modification of the "Operating Agreement" so as to eliminate those provisions found to constitute price fixing, market allocations, and profit pooling.

Enforcement of the aforesaid judgment and decree was stayed by this Court, pending an appeal by defendants to the Supreme Court. On March 10, 1969, the Supreme Court affirmed said judgment and decree, and remanded the case for further proceedings.

Thereafter, pursuant to the judgment and decree of this Court, defendants submitted successive plans for modification of the operating agreement. They also submitted a tentative plan for divestiture, and a proposed form of "Order for Modification of Operating Agreement and Decree of Divestiture." Plaintiff opposed certain aspects of defendants' plans for modification of the operating agreement; it also filed a plan for divestiture and a proposed form of order and decree.

On October 28-29, 1969, this Court held a hearing, at which it heard testimony and received documentary evidence on the proposals for modification of the operating agreement. The Court received in evidence a Third Revised Operating Plan submitted by defendants. This plan eliminated all traces of price fixing, profit pooling, and market allocation. During the hearing, certain changes were made in the plan, dealing with matters apart from elimination of the per se restraints.

After the hearing, the parties submitted briefs on the proposed modification of the operating agreement. Defendants also filed, on December 10, 1969, updated copies of their Third Revised Operating Plan and proposed order and decree, which incorporated the above-noted changes made at the hearing. Thereafter, this Court heard argument by plaintiff and defendants on modification of the operating agreement and on divestiture.

Now, Therefore, after consideration of such argument and of the aforesaid testimony and documentary evidence, and of all prior proceedings—all being considered in light of the decision of the Supreme Court herein, it is hereby further

Ordered, Adjudged, and Decreed:

##### *I. Definitions.*

As used in this order and decree:

A. "Arden" means defendant Arden Publishing Company, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Tucson, Arizona, and the publisher of a newspaper of general circulation known as "The Arizona Daily Star" (hereinafter "Star").

B. "Citizen Publishing" means defendant Citizen Publishing Company, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Tucson, Arizona, and the publisher of a newspaper of general circulation known as "The Tucson Daily Citizen" (hereinafter "Citizen").

C. The "joint Sunday newspaper" means a Sunday newspaper of general circulation published by Arden and Citizen Publishing pursuant to an agreement approved by this order.

D. "TNI" means defendant Tucson News papers Incorporated, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Tucson, Arizona, which under the provisions of this order will be engaged in the business of (a) conducting all operations in connection with the production and distribution of Star, Citizen and the joint Sunday newspaper, and (b) acting as agent for Arden and Citizen Publishing for the sale of combination advertising, and as agent for the joint Sunday newspaper for the sale of all advertising.

E. "Combination Advertising" means identical advertising which (a) appears in Star and Citizen, or in either of such newspapers and the joint Sunday newspaper, and (b) is reproduced in each newspaper by use of the same type, plate, or other device.

#### *II. Persons Bound.*

The provisions of the Judgment and Decree entered January 31, 1968, and the provisions of this Order applicable to the defendants shall also apply to each of their 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 the Judgment and Decree or of this Order by personal service or otherwise.

#### *III. Injunctive Provisions.*

A. Effective upon divestiture of the Arizona Daily Star as hereinafter ordered, the defendants are enjoined and restrained from:

(1) Offering to sell or selling advertising space in the Star and the Citizen, or in either of them and a joint Sunday newspaper, at a combination rate, unless said combination rate is optional and is calculated by adding the individual rates of the newspapers and subtracting from the total the actual cost savings;

(2) Charging or allocating the expenses of common or shared facilities, equipment or personnel on any basis or formula which does not result in Star, Citizen and the joint Sunday newspaper each paying only those expenses that it is responsible for; provided, however, that

(a) the discount resulting from the sale of a combination advertisement may be charged in equal shares to the newspapers in which it appears; and

(b) property taxes and interest on real property assessments, fire and casualty and all other general insurance, and utilities other than electrical power may be charged equally to Star and Citizen;

(3) Distributing operating revenues on any basis which does not result in Star, Citizen and the joint Sunday newspaper each receiving only those revenues which are derived from its individual operations.

B. Neither Arden nor Citizen Publishing shall prohibit or attempt to prohibit the joint Sunday newspaper from publishing combination advertising with their respective weekday editions.

#### *IV. Approval of Agreements and By-Laws.*

The Third Revised Operating Plan for Star, Citizen and Tucson Newspapers, Incorporated, attached hereto and made a part hereof, together with all acts of the defendants necessary or appropriate for the performance of said Operating Plan, are hereby approved. Said Operating Plan shall be put into effect not later than ninety (90) days from the date of this order.

*V. Divestiture.*

A. In accordance with the Court's Judgment and Decree of January 31, 1968, defendants Arden Publishing Company and William A. Small, Jr. are directed to divest themselves of the Star within Twenty-One (21) months from the date of this Order, either by defendant Arden Publishing Company selling the assets acquired by it from Star Publishing Company or by defendant William A. Small, Jr., selling and disposing of all of the stock of Arden Publishing Company. Such divestiture shall be to a person who will continue publication of the Star, and shall result in total separation of the ownership of Star and Citizen.

B. Defendants shall make generally known the availability of the Star for sale and shall furnish to bona fide prospective purchasers all appropriate information regarding the Star, the joint Sunday newspaper and T. N. I. and shall permit them to make such inspection of the facilities and operations of the Star, of the joint Sunday newspaper and of T. N. I., as is reasonably necessary for a prospective purchaser to properly advise himself.

C. At least sixty (60) days in advance of the closing date in any agreement for the sale of the Star, defendants shall supply plaintiff with the name and address of the prospective purchaser, and with a copy of such agreement. At the same time, defendants shall make known to plaintiff the names and addresses of all other persons, corporations, or other legal entities that have made an offer of purchase, together with a general description of the terms and conditions thereof. Plaintiff must make known to the defendants and to the Court any objection it may have to such sale within thirty (30) days following receipt of the aforesaid information. Within said period, defendants will furnish any additional pertinent information requested by plaintiff. If plaintiff does not file with the Court a notice of objections within said 30-day period, such sale may be accomplished without further proceedings herein.

D. Any contract of sale pursuant to this Order shall require the purchaser to file with the Court its representation that it intends to continue publication of the Star and at the same time to submit to the jurisdiction of the Court and to be bound by the applicable terms of this Order and of the Judgment and Decree of this Court entered on January 31, 1968.

*VI. Right of Visitation.*

For the purpose of determining or securing compliance with this Order 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 any defendant made to its or to his principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of any defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of any defendant which relate to any matters contained in this Order; and

(2) Subject to the reasonable convenience of any defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of any defendant, who may have counsel present, regarding any such matters.

B. Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such reports in writing with respect to the matters contained in this Order as may from time to time be reasonably requested; provided, however, that no information obtained by the means provided in this Section VI 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 Department of Justice is a party for the purpose of securing compliance with this Order, or as otherwise required by law.

*VII. Continuing Jurisdiction.*

Jurisdiction of this cause is retained by this Court for the purpose of enabling any party to this Order 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 Order and for the enforcement of compliance therewith and the punishment of violations thereof.