

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMES PRINTING COMPANY,

Defendant.

CIVIL ACTION NO. 5836

FINAL JUDGMENT

Entered: 3-27-70

Plaintiff, United States of America, having filed its complaint herein on February 24, 1970, the defendant having appeared by its counsel; and the parties hereto 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 this Final Judgment constituting evidence or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim for relief against the defendant under Section 2 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §2), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Milline rate" means the theoretical cost of one line of advertising in one million newspapers of paid circulation. It is calculated by dividing the actual line rate by actual circulation as reported in the most recent Audit Bureau of Circulations Audit Report (or comparable statistics) and multiplying the result by one million;

(B) "Circulation rates" means

- (1) the rates at which defendant sells its newspapers to customers and subscribers; and
- (2) the rates at which it suggests that its newspapers be sold to customers and subscribers;

(C) "Current Chattanooga News-Free Press milline rates" means those rates calculated by using the circulations reported in its September 30, 1969, Audit Bureau of Circulations Audit Report for 12 months ending September 30, 1969, and

- (1) with respect to retail advertising, the rates listed in its Retail Advertising rate card dated September 1, 1969;
- (2) with respect to classified advertising, the rates listed in its Classified Advertising rate card dated September 1, 1969, as modified October 15, 1969; and
- (3) with respect to general or national advertising, the rates listed in its General Advertising rate card dated November 1, 1969;

(D) "Current Chattanooga News-Free Press circulation rates" means those rates listed as being in effect since June 29, 1969, in paragraph 11(a) of its Audit Bureau of Circulations Audit Report for 12 months ending September 30, 1969.

III

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

IV

(A) Effective thirty (30) days after the date of entry of this Final Judgment defendant is enjoined and restrained, for a period of three (3) years, from operating its morning and Sunday newspaper in Chattanooga at a loss; provided, however, that during this three (3) year period defendant may operate its morning and Sunday newspaper at a loss so long as it does not

(1) sell or offer to sell advertising lineage in said morning newspaper at milline rates which (a) for the first six (6) months of said three (3) year period are less than eighty (80%) per cent of the comparable current Chattanooga News-Free Press milline rates, and which (b) for the remaining thirty (30) months of said three (3) year period are less than the comparable current Chattanooga News-Free Press milline rates; or

(2) sell or offer to sell advertising lineage in said Sunday newspaper at milline rates which are less than eighty (80%) per cent of the comparable current Chattanooga News-Free Press milline rates; or

(3) reduce its charges for preprint tabloids below those which it had in effect on February 1, 1970; or

(4) establish, maintain or publish circulation rates for said morning and Sunday newspaper which, commencing sixty (60) days after the date of entry of this Final Judgment, are less than ninety (90%) per cent of the comparable current Chattanooga News-Free Press circulation rates.

(B) Notwithstanding the provisions of subparagraph (A) of this Section IV defendant may

(1) reduce its milline or circulation rates in an amount equivalent to any reductions in current Chattanooga News-Free Press milline or circulation rates; and

(2) continue in effect its existing school service program; and

(3) sell its newspaper at reduced rates, or engage in free distribution for promotional purposes; provided, however, that the number of newspapers so distributed or sold shall at no time exceed the greater of either six (6%) per cent of total paid circulation or the number of newspapers being so distributed or sold by the Chattanooga News-Free Press; and

(4) sell or offer to sell advertising lineage in subsequent issues of its morning newspaper at a reduced rate which reflects actual cost savings resulting from the use of the same mat, plate or type.

V

Should defendant resume publication of an evening newspaper in Chattanooga during the term of this Final Judgment it is enjoined and restrained

(A) For a period of three (3) years following the date of entry of this Final Judgment from operating said evening newspaper at a loss; provided, however, that during this three (3) year period defendant may operate said evening newspaper at a loss so long as it does not

- (1) sell or offer to sell advertising linage in said evening newspaper at milline rates which are less than the comparable current Chattanooga News-Free Press milline rates; or
- (2) establish, maintain or publish charges for pre-print tabloids any lower than those which it had in effect on February 1, 1970; or
- (3) establish, maintain or publish circulation rates for said evening newspaper which are less than ninety (90%) per cent of the comparable current Chattanooga News-Free Press circulation rates.

(B) Notwithstanding the provisions of subparagraph (A) of this Section V, defendant may

- (1) reduce its milline or circulation rates in an amount equivalent to any reductions in current Chattanooga News-Free Press milline or circulation rates; or
- (2) sell its newspaper at reduced rates, or engage in free distribution for promotional purposes; provided, however, that the number of newspapers so distributed or sold shall at no time exceed six (6%) per cent of total paid circulation.

(C) For a period of three (3) years following the date of entry of this Final Judgment, from selling or offering to sell, at a reduced rate, advertising linage in said evening newspaper in combination with the same advertising linage in its morning and Sunday newspaper.

(D) For a period of ten (10) years following the expiration of said three (3) year period, from selling or offering to sell, at a reduced rate, advertising linage in said evening newspaper

in combination with the same advertising lineage in its morning and Sunday newspaper, unless said rate reduction reflects actual cost savings resulting from the use of the same mat, plate or type.

VI

Notwithstanding any of the other provisions of this Final Judgment, defendant is enjoined and restrained, for a period of thirteen (13) years, from intentionally operating any daily newspaper in Chattanooga below cost for the purpose, or with the probable effect, of eliminating a competing daily newspaper.

VII

Effective thirty (30) days after the date of entry of this Final Judgment defendant is enjoined and restrained, for a period of three (3) years, from selling or offering to sell advertising lineage in any of its newspapers at rates other than those listed on published rate cards, which rate cards shall be made freely available to all advertisers and prospective advertisers; provided, however, that defendant may sell or offer to sell advertising lineage at rates other than those listed on its published rate cards to the extent that this is done to meet an off rate card sale or offer to sell by the Chattanooga News-Free Press.

VIII

Defendant is enjoined and restrained, for a period of thirteen (13) years, from refusing to sell or to contract to sell advertising lineage in any of its newspapers separately.

IX

Defendant is ordered and directed, for a period of thirteen (13) years, to continue to maintain on at least a

monthly basis, and to preserve, detailed records of the income and expense attributable to the operation of each of its newspapers.

X

Defendant is ordered and directed upon entry of this Final Judgment to:

(A) Publish in the morning or Sunday Chattanooga Times, in the same size print as is used for news reporting, and in a news section of the paper, once a week for three (3) weeks, the text of this Final Judgment;

(B) Advise promptly, in writing, each employee, representative and agent of this Final Judgment and that each of them is subject to its provisions;

(C) File with the Court, with a copy to the plaintiff, a report of compliance with this Section X thirty (30) days following completion of the requirements of subparagraphs (A) and (B) above.

XI

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment;

ct to the reasonable convenience of defendant, and
restraint or interference from it, to interview officers
or employees of the defendant, who may have counsel present,
regarding any such matters.

Upon written request of the Attorney General, or the
Assistant Attorney General in charge of the Antitrust Division,
the defendant shall submit such reports in writing with respect
to the matters contained in this Final Judgment as may from time
to time be requested.

No information obtained by the means permitted in this
Section XI shall be divulged by any representative of the Depart-
ment of Justice to any person other than a duly authorized repre-
sentative of the Executive Branch of the Plaintiff, except in
the course of legal proceedings in which the United States is a
party for the purpose of securing compliance with this Final
Judgment, or as otherwise required by law.

XII

Jurisdiction is retained by this Court for the purpose of
enabling any of the parties 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 construction or carrying
out of this Final Judgment, for the modification of any of the
provisions contained therein, for the enforcement of compliance
therewith, and for the punishment of violations thereof.

Dated: 3-27-76

/s/ Frank W. Wilson
United States District Judge