

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. E. W. Scripps Co, U.S. District Court, S.D. Ohio, 1968 Trade Cases ¶72,586, (Nov. 12, 1968)

United States v. E. W. Scripps Co

1968 Trade Cases ¶72,586. U.S. District Court, S.D. Ohio, Western Division. Civil Action No. 5656. Entered November 12, 1968. Case No. 1804 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Acquisitions—Daily Newspaper—Divestiture—Consent Decree.—A Cincinnati publisher, alleged to have control of the only two remaining dailies in the city, was required by a consent decree to divest the most recently acquired of the two so that it will continue to operate as a strong and viable company, and forbidden by the decree from acquiring any newspaper in the 19-county Cincinnati area for five years.

For the plaintiff: Edwin M. Zimmerman, Asst. Atty. Gen.; Baddia J. Rashid, Charles D. Mahaffie, Jr., William D. Kilgore, Jr., John W. Poole, Jr., Joseph A. Tate, Leonard J. Henzke, Jr. and Charles F. B. McAleer, Attys., Dept. of Justice; Robert M. Draper, U. S. Atty., by E. Winther McCroom, First Asst. U. S. Atty.

For the defendant: Richard F. Stevens and James W. Hengelbrok.

Final Judgment

PORTER, D. J.: Plaintiff, United States of America, having filed its Complaint herein on May 27, 1964; and defendant, The E. W. Scripps Company, having filed its Answer and Supplemental Answer denying the substantive allegations thereof and plaintiff and defendant, by their respective attorneys, having consented to the making and 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 admission by any party in respect to any such issue,

Now, Therefore, without any testimony having been taken herein 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:

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 under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 14, 1914, 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" means any individual, partnership, firm, corporation, association or other business or legal entity;

(B) "Scripps" means the defendant The E. W. Scripps Company;

(C) "Trust" means The Edward W. Scripps Trust established pursuant to a Trust Agreement dated November 23, 1922, between Edward W. Scripps, Trustor, and Robert Paine Scripps, Trustee, as thereafter from time to time supplemented;

(D) "Enquirer" means The Cincinnati Enquirer, Inc., publisher of The Cincinnati Enquirer, a morning and Sunday newspaper of general circulation in Cincinnati, Ohio;

(E) "Equity interest" means any ownership or other beneficial interest in Enquirer including but not limited to common stock or voting trust certificates representing such common stock;

(F) The "Nineteen County Area" means the Counties of Brown, Butler, Clermont, Clinton, Hamilton, Highland and Warren in Ohio, the Counties of Boone, Bracken, Campbell, Gallatin, Grant, Kenton and Pendleton in Kentucky and the Counties of Dearborn, Franklin, Ohio, Ripley and Switzerland in Indiana, and each of them.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, affiliates, successors, and assigns and to each of their respective directors, officers, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Defendant is ordered to notify the Trust, majority shareholder of defendant, its trustees, agents and employees of the entry of this Final Judgment and to file with the Court in this case proof of the giving of such notice, with copy to plaintiff, within ten (10) days of such entry and thereafter, for a period of five (5) years from the date of the entry of this Final Judgment, to give similar notice to any successor or assign of the Trust and to file proof of the same within a like period with copy to plaintiff.

IV

[*Divestiture*]

Defendant is ordered to and shall divest itself of its entire equity interest in Enquirer within eighteen (18) months from the date of the entry of this Final Judgment pursuant to the following plan:

(A) Defendant's equity interest shall be divested, upon such terms and conditions as will permit the Enquirer to continue to operate as a strong and viable company, by a good faith sale to a person (1) who has no interest, financial or otherwise, in the defendant Scripps or the Trust and/or is not related to a holder of any such interest, (2) who is not an officer, director, shareholder, agent or employee of Scripps or the Trust or relative thereof, (3) who is not a person in whom defendant Scripps or the Trust has at the time of such sale any financial interest whether by stock ownership or otherwise.

(B) Scripps shall make generally known the availability for sale of its equity interest by the ordinary and usual means for the sale of such an equity interest. Scripps shall furnish to each bona fide prospective purchaser all appropriate information available to it regarding the Enquirer and shall use its best efforts to obtain from the Enquirer such additional appropriate information as may be desired by such a prospective purchaser, and to obtain permission, if requested, for such a prospective purchaser to make such inspection of the facilities and operations of the Enquirer as is reasonably necessary to properly advise himself.

(C) During the period from the date of entry hereof to the consummation of complete divestiture of such equity interest, defendant shall continue in effect The Enquirer Shareholders' Second Voting Trust Agreement dated and executed as of June 30, 1965 by defendant, The Fifth-Third Union Trust Company and Enquirer.

(D) Not less than sixty (60) days prior to the closing date designated in any contract for the sale of its equity interest, defendant shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale and other pertinent information and any additional information

plaintiff may request. At the same time, defendant shall also make known to plaintiff in writing the names and addresses of any other person or persons who have made an offer to purchase such equity interest together with the terms and conditions thereof. Not more than forty-five (45) days after its receipt of the name, address and other information concerning the proposed purchaser, plaintiff shall advise defendant and the Court in writing of any objection it may have to the consummation of the proposed sale. If no such objection is made known to defendant 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.

(E) Any contract of sale pursuant to this Final Judgment shall require the purchaser to file with this Court its representation that it intends to continue to operate the business of the Enquirer as a going concern engaged in the publication, distribution and sale of a daily and Sunday newspaper.

(F) If divestiture is accomplished by exchange of the equity interest of Scripps for the stock of another person, Scripps is enjoined from voting such stock and is ordered to divest such stock within two (2) years of its acquisition either by way of public offering or offerings or to a person or persons who would have been eligible under this Final Judgment to have purchased the equity interest, such divestiture to be subject to the terms of IV (D) above.

(G) 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

[Future Mergers]

Defendant Scripps is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment, from acquiring or holding after such acquisition, any assets of, or stock or other ownership or beneficial interest in any person engaged in the publication of a newspaper in the Nineteen County Area.

VI

[Compliance]

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

(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 Scripps made to its principal office, be permitted, subject to any legally recognized privilege:

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

(B) Upon such written request Scripps 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 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 to 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.

VII

[Jurisdiction Retained]

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