

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Greater Buffalo Press, Inc., et al., U.S. District Court, W.D. New York, 1973-2 Trade Cases ¶74,602, (Jul. 2, 1973)

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United States v. Greater Buffalo Press, Inc., et al.

1973-2 Trade Cases ¶74,602. U.S. District Court, W.D. New York. Civil No. 9004. Dated July 2, 1973. Case No. 1582, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Divestiture—After-Acquired Property—Acquired Plant's Plans to Build New Facility.—

Although at the time one printing company unlawfully acquired another the latter's erection of a new plant was still in the planning stage, the subsequently constructed plant had to be divested along with the acquired business. It appeared that the new plant's proposed existence was the motivating force behind the acquisition. Even aside from this fact, the need to reestablish competitive conditions within the market required the divestiture of the new facility. The divestiture was placed in the hands of a Special Master-Trustee, who was also directed to determine what restrictions, if any, should be placed on the divesting firm against printing or soliciting the accounts of newspapers then being printed at the plants to be divested, or what other prohibitions might be appropriate to allow the proposed purchaser to commence operations profitably and become a viable competitor.

For plaintiff: Lewis Bernstein and Elliott H. Feldman, Attys., Dept. of Justice, Antitrust Div., Washington, D. C.

For defendants: Raichle, Banning, Weiss & Halpern, Buffalo, N. Y., for Greater Buffalo Press, Inc., International Color Printing Corp., Southwest Color Printing Corp., and Dixie Color Printing Corp.; Baker, Hostetler & Patterson (Richard F. Stevens and Sargent Karch, of counsel), Cleveland, Ohio, for Newspaper Enterprise Assn., Inc.

[Opinion]

HENDERSON, D. J.: By previous order of this court, plaintiff's complaint, which included an allegation that Greater Buffalo Press, Inc. violated [Section 7 of the Clayton Act](#) by the acquisition of International Color Printing Co. in 1955, was dismissed after full trial. The United States Supreme Court reversed that order and remanded the action to this court for additional findings of fact and to fashion an appropriate and effective remedy. *United States v. Greater Buffalo Press, Inc., et al.* [[1971 TRADE CASES ¶ 73,591](#)], 402 U. S. 549 (1971). In doing so, that Court found that Greater Buffalo violated [Section 7 of the Clayton Act](#) by its 1955 acquisition. It also found that the area of effective competition prior to that time consisted of the business of Greater Buffalo, International and King Features Syndicate, a division of Hearst Corporation, all of which engaged in a single line of commerce consisting of the printing and distribution of color comic supplements.

The action was remanded to this court for additional findings concerning the consent decree entered with the Hearst Corporation and also with regard to the facility constructed at Sylacauga, Alabama, after the 1955 acquisition. Plaintiff now moves for entry of supplemental findings and judgment.

In accordance with the Supreme Court opinion in this action and based upon the evidence of record herein, this court enters the following Supplemental Findings of Fact:

1. When Greater Buffalo Press acquired International's stock in 1955 it gained control of approximately 75% of the printing volume done by independent color comic supplement printers.
2. As a result of this acquisition, Greater Buffalo and International ceased to be in competition.
3. Furthermore, as a result of this acquisition, King has depended upon Greater Buffalo for most of the printing which it sells in competition with Greater Buffalo.

4. Since King must now sell to newspapers at a higher price than Greater Buffalo charges King for printing, the competition between King and Greater Buffalo is restricted.
5. A further result of the 1955 acquisition by Greater Buffalo is that the difficulties of new entrants in the relevant market becoming real competition of Greater Buffalo have been greatly increased.
6. In 1950 Greater Buffalo made a moral commitment to certain newspapers to build a printing plant in the Deep South.
7. When Greater Buffalo acquired International in 1955, International was actively pursuing expansion plans in order to prevent the competitive loss of printing business through the erection of Greater Buffalo's printing plant in Lufkin, Texas. International implemented these plans by taking what it deemed necessary steps toward building a printing plant in Sylacauga, Alabama These included: obtaining a commitment from the inhabitants of Sylacauga to convey a site to International, gratis, and directing them to complete the acquisition of the site, making plans for the construction of the proposed plant; commencing the readying of presses and equipment for use in the proposed plant; and obtaining a contract to supply newsprint to the proposed plant.
8. Greater Buffalo's acquisition of International eliminated potential competition between Greater Buffalo and the International-King combination for the printing and selling of supplements for newspapers which International and King proposed to print in International's proposed Sylacauga, Alabama plant.
9. After the acquisition of International, Greater Buffalo utilized International's equipment, funds and manpower to construct, equip and generally prepare the Sylacauga plant. When printing operations at the Sylacauga plant were commenced in 1963, substantial color comic supplement runs were transferred from International's Wilkes-Barre plant to meet Greater Buffalo's minimum estimates for a profitable operation.
10. The Sylacauga plant is owned and operated by Dixie Color Printing Corp., a wholly owned subsidiary of Greater Buffalo, under Greater Buffalo's management and control.

In view of the above findings, it is apparent that any effective remedy for this Section 7 violation must accomplish a dual objective. It must not only eliminate the illegally acquired market power but also restore competitive conditions which were for all practical purposes destroyed by the 1955 acquisition. The only remedy capable of accomplishing this result is divestiture. Although severe, it is effective. It is also well recognized as the natural and appropriate remedy for the type of violation involved herein. *Ford Motor Co. v. United States* [[1972 TRADE CASES ¶ 73,905](#)], 405 U. S. 562 (March 1972); *United States v. E. I. du Pont de Nemours Co.* [[1961 TRADE CASES ¶ 70,017](#)], 366 U. S. 316 (1961).

[*After-Acquired Plant*]

Consistent with the objectives to be accomplished, divestiture must include not only the stock of International but also the stock of Dixie Color. Although in point of time the Sylacauga plant was acquired after the acquisition of International, its proposed existence was the motivating force behind Greater Buffalo's acquisition of International.

Even aside from the findings entered above with respect to the Sylacauga plant, the need to re-establish competitive conditions within the market require the divestiture of that facility. It is difficult to imagine how any new entrant into the market could hope to compete successfully with one facility in Wilkes-Barre against a competitor with facilities in Lufkin, Sylacauga and Dunkirk.

Accordingly, any remedy, in order to be appropriate and effective, must include divestiture of the stock of Dixie Color. *United States v. Aluminum Company of America* [[1964 TRADE CASES ¶ 71,243](#)], 233 F. Supp. 718, 247 F. Supp. 308 (E. D. Mo. 1964), aff'd [[1965 TRADE CASES ¶ 71,567](#)], 382 U. S. 12 (1965); *Utah Public Service Commission v. El Paso Natural Gas Co.* [[1969 TRADE CASES ¶ 72,824](#)], 395 U. S. 464 (1969).

[*Additional Prohibitions*]

Finally plaintiff seeks certain ancillary relief in the form of an injunction against Greater Buffalo printing for King for a certain period of time. While such relief may be "necessary and appropriate" under controlling precedents,

it may also be anticompetitive if, as advanced by the Hearst Corporation, such relief would eliminate King as a competitor altogether.

The question of whether such relief is appropriate and if so, under what conditions, is more appropriate for resolution following report of the Special Master-Trustee pursuant to the terms of the judgment entered herewith.

In accordance with the foregoing, it is hereby ordered and adjudged that:

- (1) This court makes the supplemental findings of fact which are set forth above and made a part of the record herein;
- (2) Greater Buffalo violated section 7 of the Clayton Act on or about June 25, 1955, by its acquisition of the outstanding stock of International;
- (3) Greater Buffalo is directed to divest itself of the outstanding stock of International and Dixie and all rights and assets under Greater Buffalo's possession or control, directly or indirectly, concerning the business conducted by the said subsidiary-companies at their respective plants in Wilkes-Barre, Pennsylvania, and Sylacauga, Alabama, in accordance with the procedure set forth below;
- (4) A Special Master-Trustee shall be designated by this court for the purpose of effectuating the sale of the businesses of International and Dixie within one year;
- (5) Upon the designation by this court of the Special Master-Trustee, Greater Buffalo will immediately deliver to such Special Master-Trustee all of its outstanding stock in International and Dixie and will cause to be assigned to said Special Master-Trustee all assets and rights under its possession and control, directly and indirectly, concerning the businesses conducted by International and Dixie at their respective plants located in Wilkes-Barre, Pennsylvania, and Sylacauga, Alabama;
- (6) The Special Master-Trustee to be appointed by this court shall hold said stock, assets and rights until further order of this court for the purpose of offering for sale a single viable business entity capable of providing effective competition in the printing and sale of color comic supplements;
- (7) Until the Special Master-Trustee has sold the stock, assets and rights transferred to him pursuant to paragraph 5 hereof, Greater Buffalo shall be entitled to all the proceeds and profits from the operations of the businesses to be divested and will assume all the liabilities thereof; and Greater Buffalo will have the unrestricted right to control all of the operations of the businesses to be conveyed, but shall not take any action without the approval of the Special Master-Trustee which would frustrate or impair the ability of the said Special Master-Trustee to accomplish the divestiture as provided for in this judgment;
- (8) The Special Master-Trustee to be appointed by this court shall as trustee be charged with the responsibility of offering for sale such stock, assets and rights of the companies to be conveyed so as to create a single viable business entity capable of providing effective competition in the printing and sale of color comic supplements. In addition, such trustee as special master shall ascertain all pertinent facts, as may be necessary, through communications with industry personnel, examination of the physical assets and records of the companies to be conveyed or the taking of testimony under oath in order:
 - (a) that the sale of such assets and rights to be divested shall be at a nonconfiscatory price by taking into account the investment of Greater Buffalo and the fair market value of the companies to be conveyed as color comic supplement printers; and
 - (b) to determine what restrictions, if any, should be imposed upon Greater Buffalo for a reasonable period of time relating to prohibitions against printing or soliciting the accounts of newspapers now being printed at the plants to be divested, or any other prohibitions so as to permit the proposed purchaser, or purchasers, to commence operations profitably and become a viable competitor in the printing and sale of color comic supplements;
- (9) Greater Buffalo, International, Dixie and the plaintiff shall permit upon the request of the Special Master-Trustee, subject to any legally recognized privilege:

(a) access, during the office hours of said parties to all books, ledgers, accounts, correspondence, memoranda and other records and documents, in the possession or under the control of said persons, which relate to the nature and scope of competition or potential competition in the printing and sale of color comic supplements or to Greater Buffalo's investment in the assets to be divested; and

(b) interviews with any of the officers and employees of Greater Buffalo, International and Dixie, who may have counsel present, or the taking of their testimony under oath regarding such matters;

(10) The Special Master-Trustee shall offer the businesses to be divested for sale and shall execute a written contract, containing the prohibitions, if any, against Greater Buffalo attached thereto or incorporated in the contract, with a proposed purchaser, or purchasers, subject to the approval of this court;

(11) No later than thirty days after the Special Master-Trustee has executed a contract for the sale of the businesses involved, the Special Master-Trustee shall submit to this court, upon notice to counsel for each of the parties to this action, a written motion for approval of the proposed transaction. Such moving papers shall contain a copy of the executed contract, any proposed restrictions which should be imposed upon Greater Buffalo in the printing and sale of color comic supplements if not made part of the contract, and shall set forth by affidavit, or affidavits, the facts relied upon to indicate that there is a reasonable probability that the business entity to be purchased will be a viable competitor and that the price is nonconfiscatory as to Greater Buffalo by taking into account the investment of Greater Buffalo and the fair market value of the companies to be divested as color comic supplement printers;

(12) Upon the return date of the motion by the Special Master-Trustee requesting approval of the proposed sale, counsel for the plaintiff, after notice to counsel for each of the parties to this action, shall submit the specific terms and conditions under which it has moved this court for an order prohibiting Greater Buffalo from printing for the King Features Syndicate Division of The Hearst Corporation for a period of ten years following the divestiture from Greater Buffalo of International and Dixie; and

(13) No later than thirty days following the entry of this judgment, counsel for the plaintiff shall submit to this court a proposed order of reference to the master upon notice to all other counsel. Such order shall specify the duties necessary to implement paragraphs (5) through (13) of this judgment and further detail the manner of compensation of such master and reimbursement for necessary expenses.

It is so ordered.