

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. <u>60-Civ.-1803</u>
)	
WESTERN NEWSPAPER UNION,)	
)	
Defendant.)	
)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on May 4, 1960, and the parties hereto, by their respective attorneys, having consented to the entering of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party hereto 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 hereof and of the parties hereto. The complaint states claims for relief against the defendant, under Section 1 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.

II

As used in this Final Judgment:

- (A) "WNU" shall mean the defendant Western Newspaper Union, a corporation organized and existing under the laws of the State of Delaware, with its present principal place of business in New York City;

- (B) "Co-conspirators" shall mean the J. M. Huber Corporation, Potdevin Machine Co., The Chandler & Price Company, Acme Steel Company, American Smelting and Refining Company, Virkotype Corporation, The Printing Machinery Company, H. B. Rouse & Company, Universal Mono-Tabular and Robertson Photo-Mechanix, Inc.;
- (C) "Person" shall mean any individual, partnership, firm, corporation, association, or other business or legal entity;
- (D) "Weekly newspaper" shall mean any newspaper of general circulation which is published less than daily;
- (E) "Rural printer" shall mean any person who owns, publishes or prints any weekly newspaper;
- (F) "Printing machinery, equipment or supplies" shall include specifically but not be limited to those items listed in Schedule (A) attached to this Final Judgment and made a part hereof, and shall, in addition, include any other item of machinery, equipment, or supply used by any printer;
- (G) "Printers' services" shall mean national advertising, prepared editorials, syndicated newspaper articles, comic strips and other feature materials, customarily sent to rural printers in the form of ready-print, mats or stereotypes, or otherwise;
- (H) "Ready-print" shall mean a sheet of partially pre-printed newsprint paper in which national advertising, editorials, syndicated articles, comic strips, or other feature materials are printed prior to shipment to a rural printer.

III

The provisions of this Final Judgment applicable to the defendant shall apply to such defendant and to each of its subsidiaries or affiliates,

successors, assigns, directors, officers, employees and agents, and to all persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant WNU is enjoined and restrained from:

- (A) Entering into, maintaining, adhering to, enforcing or claiming any rights under any combination, contract, agreement, understanding, plan or program to fix, determine, maintain or adhere to prices or other terms or conditions for the sale of printing machinery;
- (B) Requiring or compelling any manufacturer, distributor or dealer of printing machinery, equipment or supplies to adhere to any fixed, suggested or specified price at which such products are sold to third persons;
- (C) Allocating, dividing, or apportioning territories, markets or customers for the manufacture, sale or distribution of printing machinery, equipment or supplies; provided that this subsection (C) shall not, subject to Section X, subsection (D) of this Final Judgment, prevent any manufacturer of printing machinery from appointing the defendant as a sales or distributing agent of such manufacturer in any designated territory or locality.

For the purpose of subsections (A) and (B) hereof the term "price" or "prices" includes, but is not limited to, discounts, trade-in values for

used printing machinery, equipment or supplies and charges on account of freight or other transportation.

V

(A) Defendant WNU is ordered and directed, within thirty (30) days from the date of entry of this Final Judgment, to:

- (1) Terminate and cancel any provisions of any contract, agreement or understanding with any of the co-conspirators which fixes or which purports to fix the price at which printing machinery, equipment or supplies shall be sold to third persons, or which is in any other manner, inconsistent with this Final Judgment;
- (2) Mail a copy of this Final Judgment to each of the co-conspirators and within forty (40) days from the date of entry hereof, to file with the Clerk of this Court, and serve upon the plaintiff, an affidavit setting forth the manner in which compliance has been made with the provisions of this subsection V (A).

(B) Defendant WNU is enjoined and restrained, for a period of ten (10) years from the date of entry of this Final Judgment, from entering into, maintaining, adhering to or claiming any rights under any contract, agreement, understanding, plan or program with any of the co-conspirators which suggests or fixes or which purports to suggest or fix resale prices for the sale or printing machinery, equipment or supplies.

VI

Except as provided in Section V (A) and V (B), nothing contained in this Final Judgment shall prevent the defendant, WNU, from availing itself of such lawful rights, if any, which it may have under the Miller-Tydings and McGuire Acts; provided, however, in any action brought by the plaintiff to enforce the provisions of Section IV of this Final Judgment, the burden of establishing the legality of any resale price maintenance contracts under the Miller-Tydings Act, McGuire Act and applicable State law shall be upon the defendant WNU.

VII

Defendant WNU is jointly and severally enjoined and restricted from enforcing, after the date of the entry of this Final Judgment, any provision of any contract, agreement or understanding between such defendant and any other person which hinders, restricts, limits or prevents any person from engaging, in any manner, in the manufacture, sale or distribution of printing machinery, equipment or supplies, or the publication of any weekly newspaper.

VIII

To the extent that, and within the territories in which the defendant WNU shall, after the date of the entry of this Final Judgment, engage in the manufacture, sale or distribution of printing machinery, equipment or supplies, ready-print or printers' services, the defendant is ordered and directed to offer to sell, and to sell, to any rural printer requesting the same, upon reasonable, non-discriminatory prices, terms and conditions of sale (including credit terms where the extension of credit is justified by reasonable business standards):

(A) Ready-print, either with or without national advertising, the purchaser to have the option of purchasing such ready-print either with or without such national advertising;

(B) Any and all printing machinery, equipment or supplies in the manufacture, sale or distribution of which such defendant may be regularly engaged either on its own account or as sales or distribution agent for the manufacturer thereof.

IX

Defendant WNU is enjoined and restrained from knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, also as an officer, director, agent or employee of any other person engaged in the manufacture, sale or distribution of printing machinery, equipment or supplies; provided, however, that the provisions of this Section IX

shall not prohibit F. W. Perry and Bruce R. Tuttle from serving on the Board of Directors or as officers of the Pensacola News Journal Company, or either John H. Perry, Jr. or F. W. Perry from being a partner in John H. Perry Associates; and provided further, that the provisions of this Section IX shall not prohibit an officer, director, agent or employee of WNU from serving as an officer, director, agent or employee of any corporation which is wholly owned (except for directors' qualifying shares) subsidiary of Western Newspaper Union.

X

Defendant WNU is enjoined and restrained from, directly or indirectly:

- (A) Selling or causing to be sold printing machinery, equipment or supplies (1) below cost, or (2) at unreasonably low or discriminatory prices for the purpose or with the effect of destroying a competitor or suppressing competition;
- (B) Bidding in response to any invitation for bids issued by any public authority, if the defendant, or any agent or employee of the defendant has aided or assisted such public authority in the preparation of the specifications relating to any such invitation for bids;
- (C) Urging, influencing or suggesting, or attempting to urge, influence or suggest, any person to refrain from advertising in any weekly newspaper or otherwise doing any business with any other person;
- (D) Coercing, or attempting to coerce, in any manner, any person engaged in the manufacture of printing machinery, equipment or supplies to grant to the defendant an exclusive contract for the sale or distribution of any such product;
- (E) Enforcing or claiming any rights under any contract, agreement or understanding with any manufacturer of printing machinery, equipment or supplies which designates WNU as an exclusive distributor or dealer of or for such manufacturer

in any territory, or which, in any manner, restricts the right of such manufacturer to appoint any other person as a distributor or dealer in the same or any other territory;

(F) Selling, or offering for sale, or otherwise furnishing or offering to furnish, any printing machinery, equipment or supplies, upon any condition, agreement or understanding that the purchaser will purchase or otherwise obtain from such defendant any other printing machinery, equipment or supplies;

(G) Hindering, restricting, limiting or preventing any person from engaging in business as a rural printer or from publishing a weekly newspaper.

XI

The provisions of this Final Judgment shall not, in any manner, operate as a bar or estoppel against any suit or proceedings which the United States may institute at any time after the date of the entry of this Final Judgment based in whole or in part upon any acquisition by defendant WNU herein of any of the capital stock, physical assets, business or good will of any person engaged in the manufacture, sale or distribution of printing machinery, equipment or supplies and regardless of whether any such acquisition occurred prior to or after the date of the entry of this Final Judgment. In any such suit or proceeding instituted by the United States, the United States shall not, by virtue of any of the provisions of this Final Judgment, be required to show or establish any change in material circumstances occurring subsequent to the date of the entry of this Final Judgment, nor in any manner, be barred or estopped, by virtue of any of the provisions of this Final Judgment, from introducing any testimony or evidence relating to any acquisition by defendant WNU, either prior to or after the date of the entry of this Final Judgment, of any of the capital stock, physical assets, business or good will of any person engaged in the manufacture, sale or distribution of printing machinery, equipment or supplies.

XII

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment;
- (B) Subject to the reasonable convenience of the defendant and without restraint or interference from the defendant, 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 necessary to the enforcement of this Final Judgment.

No information obtained by the means provided in this Section XII 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 the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

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 thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

The Final Judgment entered on August 18, 1953 by this Court in the case of United States v. Western Newspaper Union, et al., Civil No. 87-60 is hereby vacated as to defendant WNU.

Dated: May 4, 1960

Sylvester J. Ryan
United States District Judge

We consent to the entry of the foregoing Final Judgment.

For the Plaintiff:

/s/ Robert A. Bicks
ROBERT A. BICKS

/s/ Philip L. Roache, Jr.
PHILIP L. ROACHE, JR.

/s/ W. D. Kilgore, Jr.
W. D. KILGORE, JR.

/s/ Charles F. B. McAleer
CHARLES F. B. McALEER

/s/ Lewis Bernstein
LEWIS BERNSTEIN

/s/ Joseph J. O'Malley
JOSEPH J. O'MALLEY

/s/ Robert J. Ludwig
ROBERT J. LUDWIG

Attorneys, Department of Justice

For the Defendant:

Royall, Koegel, Harris & Caskey

By /s/ Frederick W. P. Lorenzen
FREDERICK W. P. LORENZEN

SCHEDULE "A"

Typesetting machines

Cylinder presses

Platen presses

Electric motors

Numbering machines

Mailing equipment

Stitching punches

Perforating machinery

Type-and-plate-making equipment

Newsprint (including newsprint in the form of ready-print as
defined in Section II (H) of this Final Judgment)

Mats, stereotypes, type, metal, ink, office supplies

Bag making, gluing, coating and labelling machinery

Printing presses and paper cutters

Wire stitching, wirestitching machines

Raised lettering or embossing machines and the inks, powders
and compounds used therewith

Precision printing equipment and mounting bases known as "Sterling
Toggel" and "Warnock"

Printers' tools and printing machinery such as composing sticks,
lead and rule cutters, job sticks, line gauges, plate
saws, band saws and mitering machines

Universal strip caster and universal mono-tabular broach

Photo-mechanical and allied equipment

Printers' services as defined in Section II (G) of this Final Judgment