

*Newspaper Industry
Monopolies
Failing Newspaper
Act*

NEWSPAPER PRESERVATION ACT

JUNE 15, 1970.—Referred to the House Calendar and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,
submitted the following

REPORT
Together with
INDIVIDUAL VIEWS
[To accompany H.R. 279]

The Committee on the Judiciary, to whom was referred the bill (H.R. 279) to exempt from the antitrust laws certain joint newspaper operating arrangements having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

Strike all after enacting clause and insert in lieu thereof the following:

"SECTION 1. This Act may be cited as the 'Newspaper Preservation Act'.

"DECLARATION OF POLICY

"SEC. 2. In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this Act.

"DEFINITIONS

"SEC. 3. As used in this Act—

"(1) The term 'antitrust law' means the Federal Trade Commission Act and each statute defined by section 4 thereof (15 U.S.C. 44) as 'Antitrust Acts' and all amendments to such Act and such statutes and any other Acts in pari materia.

"(2) The term 'joint newspaper operating arrangement' means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method,

and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: Provided, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.]

"(3) The term 'newspaper owner' means any person who owns or controls directly or indirectly through separate or subsidiary corporations, one or more newspaper publications.

"(4) The term 'newspaper publication' means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

"(5) The term 'failing newspaper' means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.

"(6) The term 'person' means any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

"ANTITRUST EXEMPTION

"SEC. 4. (a) It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operating arrangement entered into prior to the effective date of this Act, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication: Provided, That the terms of a renewal or amendment to a joint operating arrangement must be filed with the Department of Justice.

"(b) It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this Act.

"(c) Nothing contained in this Act shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this Act, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

"PREVIOUS TRANSACTIONS

"SEC. 5. (a) Notwithstanding any final judgment rendered in any action brought by the United States under which a joint operating arrangement has been held to be unlawful under any antitrust law, any party to such final judgment may reinstate said joint newspaper operating arrangement to the extent permissible under section 4(a) hereof.

"(b) The provisions of section 4 shall apply to the determination of any civil or criminal action pending in any district court of the United States on the date of enactment of this Act in which it is alleged that any such joint operating agreement is unlawful under any antitrust law.

"SEPARABILITY PROVISION

"SEC. 6. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Act, and the applicability of such provision to any other person or circumstance, shall not be affected thereby."