



DEPARTMENT OF JUSTICE
Antitrust Division

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Lee H. Simowitz, Esq.
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W.
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Washington, District of Columbia 20036-5304

Dear Messrs. Marx and Simowitz:

This letter responds to your request, on behalf of MediaNews Group, Inc. ("MediaNews"), the Denver News Agency ("DNA"), and E.W. Scripps Co. ("Scripps"), for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6 (2005). You requested a statement of the Department's present enforcement intentions regarding a new edition of the *Denver Post* that will be distributed without charge to its readers.

MediaNews's *Denver Post* and Scripps's *Rocky Mountain News* operate in a newspaper Joint Operating Agreement ("JOA") that the Attorney General approved pursuant to the Newspaper Preservation Act, 15 U.S.C. §§ 1801-1804 (2005) ("NPA"). The NPA provides in section 1802(2) limited antitrust immunity for specified joint or unified action "[p]rovided, [t]hat there is no merger, combination, or amalgamation of [the JOA newspapers'] editorial or reportorial staffs, and that [the] editorial policies be independently determined."

Based on the information provided by MediaNews, Scripps, and DNA, we understand the plan for the new edition to be as follows. First, MediaNews seeks to create a free edition of the *Denver Post*, which will rely on the news and editorial resources of the *Denver Post*. The *Denver Post*'s new edition will be reportorially and editorially independent from Scripps's *Rocky Mountain News*. Second, both the *Denver Post* and the *Rocky Mountain News* have complete news and editorial independence, which would not be altered by the pending proposal. Third, only the commercial non-reportorial and non-editorial functions of the proposed new edition of the *Denver Post* will be handled by the DNA, and all expenses and revenues of the *Denver Post*'s new edition will be treated and allocated in the same way as those of the *Denver Post* and *Rocky*

Mountain News. Fourth, other than the representations contained in your submissions, there are no side agreements or other understandings among MediaNews, Scripps, and/or DNA relating to this new edition of the *Denver Post*.

We understand that MediaNews has not prepared any written plans or studies on the proposed new edition. MediaNews believes, however, that the creation of the new edition would allow the *Denver Post* to broaden its audience by expanding its penetration among certain demographic groups and would create another choice for its existing advertisers as well as potential advertisers who want to reach this audience.

DNA is the sole entity for the JOA parties that sets rates, communicates with advertisers, and receives the market intelligence from advertisers that is needed to respond to economic forces. MediaNews represents that neither it nor the *Denver Post* have a marketing or advertising department in Denver; therefore, it would be difficult for MediaNews to determine what the optimal advertising rates should be for the new edition of the *Denver Post*. Advertising rates set without this market information would be arbitrary and could lead to the failure of the new edition of the *Denver Post*. In addition, MediaNews asserts that its corporate structure would make it impractical to firewall those MediaNews officials who would determine the advertising rates of the new edition of the *Denver Post* from the rest of MediaNews. Finally, the new edition of the *Denver Post*, in addition to its own advertising rates, would offer combination rates whereby the advertiser could place an advertisement in the new edition of the *Denver Post* and the other JOA newspapers. Joint activity is necessary for the parties' effectively setting such combination rates.

It appears as though the proposal you have submitted could not be accomplished without either amending the JOA that the Attorney General approved in January 2001 or entering into a side agreement. Consequently, the agreements and conduct necessary to effectuate your proposal appear not to be immunized by the NPA. As a result, we have reviewed your proposal as we would any other potentially efficiency enhancing joint conduct. Based on the above-stated understandings and representations, the Department of Justice has no present intention to take enforcement action against the introduction of the new edition of the *Denver Post*. The creation of a new edition of the *Denver Post* likely will increase output and create greater choice for both readers and advertisers in the Denver metropolitan area. Our understanding, based on the parties' representations, is that the new edition is not part of any plan to bring about either the premature termination of the JOA or the closing of either the *Denver Post* or *Rocky Mountain News*. It also appears that MediaNews could not efficiently operate the new free edition of the *Denver Post* independently of the JOA.

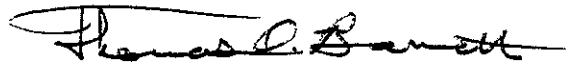
Additionally, given the representations of the parties, the Division has no present intention to assert that the creation of the new edition of the *Denver Post* would jeopardize the antitrust immunity for the parties' existing JOA approved by the Attorney General. The NPA's limited antitrust immunity may be lost, *inter alia*, if a preexisting, non-failing newspaper publication is added to a JOA. See 15 U.S.C. § 1803 (conditioning approval of JOAs on a determination that not more than one of the newspapers involved be a non-failing newspaper). The creation of a new edition of a newspaper publication within the JOA, in such a way that is consistent with the requirements of the NPA and does not fundamentally change the JOA approved by the Attorney General, should not jeopardize the parties' pre-existing NPA immunity. Importantly in this regard, you represent that the new edition is not likely to impinge upon the independence of the reportorial and editorial functions of MediaNews and Scripps that the NPA requires.

In stating these enforcement intentions, the Department notes that this letter expresses only the Department's current enforcement intention and is issued in reliance on the information

and representations contained in your original request and your subsequent submissions of July 1, 12, and 19, 2005. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual activities of MediaNews, DNA, or Scripps prove to be anticompetitive in purpose or effect in any market, and are not immunized under the NPA.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to this procedure, your business review request and this letter will be made publicly available immediately, and any supporting documentation will be made publicly available within 30 days of the date of this letter, except for any part of the materials for which you have requested and justified confidential treatment in accordance with Paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas O. Barnett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas O. Barnett
Acting Assistant Attorney General