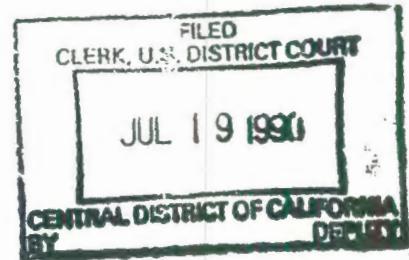


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18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 PACIFIC AMPHITHEATRE PARTNERSHIP;
24 IRVINE MEADOWS AMPHITHEATER
25 PARTNERSHIP; and
26 OGDEN ALLIED SERVICES CORPORATION,

27 Defendants.

28 Civil No. 90 3797HN(Sx)

SUIT FOR PRELIMINARY
AND PERMANENT INJUNCTION
AGAINST ACQUISITION

15 U.S.C. § 18

ANTITRUST

29 COMPLAINT

30 The United States of America, plaintiff, by its attorneys,
31 acting under the direction of the Attorney General of the United
32 States, brings this civil action to obtain equitable and other
33 relief against the defendants named herein and complains and
34 alleges as follows:

35 I.

36 JURISDICTION AND VENUE

37 1. This complaint is filed and this action is instituted
38 under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25,

1 to prevent and restrain the violation by defendants, as
2 hereinafter alleged, of Section 7 of the Clayton Act, as amended,
3 15 U.S.C. § 18.

4 2. Irvine Meadows Amphitheater Partnership transacts
5 business and is found within the Central District of California.

6 3. Pacific Amphitheatre Partnership transacts business and
7 is found within the Central District of California.

8 4. Ogden Allied Services Corporation, directly or through
9 subsidiaries, transacts business and is found within the Central
10 District of California.

11 5. Venue is proper in the Central District of California
12 under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C.
13 § 1391(c).

14 II.

15 DEFINITIONS

16 6. "Concert amphitheater" means an outdoor facility used on
17 a regular basis for the presentation of concerts by performing
18 artists.

19 7. "HHI" means the Herfindahl-Hirschman Index, a measure of
20 market concentration. It is calculated by squaring the market
21 share of each firm competing in the market and then summing the
22 resulting numbers. For example, for a market consisting of four
23 firms with shares of thirty, thirty, twenty, and twenty percent,
24 the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes
25 into account the relative size and distribution of the firms in a
26 market and approaches zero when a market consists of a large
27 number of firms of relatively equal size. The HHI increases both
28 as the number of firms in the market decreases and as the
disparity in size between those firms increases.

1 developer Michael Forman, each own a 25% interest in Pacific.

2 12. Ogden Allied Services Corporation ("Ogden") is made a
3 defendant herein. Ogden is a Delaware corporation. It is a
4 subsidiary of Ogden Corporation, which had annual sales of over
5 \$1.3 billion in 1989. Through its subsidiaries and affiliates,
6 Ogden provides concession services for sports and entertainment
7 facilities and manages various such facilities, including the Los
8 Angeles Forum.

9 IV.

10 TRADE AND COMMERCE

11 13. Irvine Meadows and Pacific own the only two concert
12 amphitheatres in Orange County, California. The Irvine Meadows
13 concert amphitheater has a capacity of approximately 15,500 seats,
14 consisting of 10,500 fixed seats and 5,000 lawn seats. The
15 Pacific concert amphitheater has a capacity of approximately
16 18,000 seats, consisting of 8,000 fixed seats and 10,000 lawn
17 seats. The two concert amphitheatres are centrally located in
18 Orange County and about eight miles apart. Both are designed
19 specifically for concerts by performing artists. Both have box
20 offices, food and beverage facilities, souvenir stands, restrooms
21 and other concertgoer amenities, stages and dressing rooms. Both
22 have electrical and sound systems suitable for concerts by
23 performing artists that are designed to deliver high quality sound
24 throughout the amphitheater. Both have ample parking and are
25 located near freeways with roads that provide easy access for
26 concertgoers.

27 //

28 //

1 14. Total revenues from concerts at both Irvine Meadows and
2 Pacific Amphitheaters are approximately \$16 million to \$19 million
3 annually.

4 15. Irvine Meadows and Pacific compete against each other in
5 supplying venues for concerts in Orange County by performing
6 artists. For promoters, performing artists, and concertgoers,
7 there are no practical substitutes for these two concert
8 amphitheaters, because, as more fully set forth below, of their
9 capacity, location, availability, cost of operation and overall
10 appeal to concertgoers and performers as a location for concerts.

11 16. Over two million people live in Orange County. Many
12 performing artists have significant numbers of fans who reside in
13 the area. Frequently, artists perform in concert at the Pacific
14 or Irvine Meadows facilities as part of a national tour of concert
15 amphitheaters. Most of these touring artists who perform at the
16 Pacific or Irvine Meadows concert amphitheater also perform at a
17 venue in the Los Angeles County area as part of the same tour.
18 For the performing artists and promoters who present concerts, the
19 Orange County area constitutes a distinct geographic area for
20 concerts that is separate from the Los Angeles County area and
21 from other areas.

22 17. There is no reasonable substitute venue for the Pacific
23 or Irvine Meadows amphitheaters to which promoters or performing
24 artists would switch a significant number of concerts in response
25 to a small but significant and nontransitory increase in the price
26 of using these two Orange County concert amphitheaters for a
27 concert. Possible alternative facilities are poor substitutes to
28 either of the Orange County concert amphitheaters for any of

1 several possible reasons, such as higher rental fee; lower seating
2 capacity; lesser ability to attract concertgoers or performers due
3 to location and other facility characteristics; lower revenues
4 from parking, concessions, merchandise and endorsements; higher
5 costs of operation, such as providing security and constructing
6 stage and sound systems; and fewer desirable dates available for
7 concerts.

8 18. For a significant number of concertgoers who attend
9 concerts at the Pacific or Irvine Meadows amphitheaters, indoor
10 concert facilities and concert amphitheaters outside Orange County
11 are not good substitutes for one of the Orange County
12 amphitheaters. Many concertgoers prefer to attend concerts
13 outdoors in the warm months from late spring to early fall. The
14 nearest concert amphitheaters to the Pacific and Irvine Meadows
15 facilities are about forty miles away. There is no reasonable
16 substitute for the Pacific or Irvine Meadows amphitheaters to
17 which a significant number of concertgoers would switch in
18 response to a small but significant and nontransitory increase in
19 the price of attending concerts at the two Orange County concert
20 amphitheaters.

21 19. Supplying the use of concert amphitheaters for concerts
22 by performing artists constitutes a line of commerce and relevant
23 product market within the meaning of Section 7 of the Clayton Act.

24 20. Orange County, California is a section of the country and
25 a relevant geographic market for concert amphitheaters within the
26 meaning of Section 7 of the Clayton Act. Although concertgoers
27 from outside Orange County attend concerts at the Pacific and
28 Irvine Meadows concert amphitheaters, Orange County is the

1 relevant geographic market because concert facilities outside
2 Orange County are not good substitute venues for the concert
3 amphitheaters within Orange County for a significant number of the
4 performing artists and promoters who present concerts at the
5 Orange County concert amphitheaters, or, for a significant number
6 of the concertgoers who attend concerts at the Orange County
7 concert amphitheaters.

8 21. Supplying the use of concert amphitheaters in Orange
9 County is the relevant market ("Orange County concert amphitheater
10 market") in which the violation alleged below will occur.

11 22. The Irvine Meadows and Pacific concert amphitheaters each
12 have close to the same capacity, revenue potential, and cost of
13 operation. Each held approximately one-half of the major concerts
14 by performing artists in Orange County over the past three years.
15 Treating Irvine Meadows and Pacific as equally significant
16 competitors, each with a 50% share of the relevant market, yields
17 an HHI of 5000 before the combination of the two under a single
18 ownership. This is a highly concentrated market.

19 23. Irvine Meadows and Pacific have negotiated an agreement
20 to combine their assets and operations. As a result of that
21 combination, sources supplying the use of concert amphitheaters in
22 Orange County will be reduced from two to one. One firm will own
23 both amphitheaters, resulting in a monopoly in the relevant
24 market; the HHI will be increased by 5,000 to 10,000, which is the
25 maximum.

26 24. Entry into the Orange County concert amphitheater market
27 is difficult and time consuming. Entry obstacles include the
28 difficulty and expense of (a) finding a suitable site that both

1 has good freeway and road access and is removed from residences
2 and other incompatible neighbors, and (b) obtaining all necessary
3 environmental, land-use, and other regulatory approval.

4 25. Concert amphitheaters in Orange County are frequently
5 used by performing artists as part of national tours. Irvine
6 Meadows and Pacific obtain substantial quantities of goods and
7 services from sources outside the State of California. Supplying
8 the use of concert amphitheaters in Orange County is within the
9 flow of and substantially affects interstate commerce. Irvine
10 Meadows, Pacific, and Ogden each are engaged in interstate
11 commerce and in activities substantially affecting interstate
12 commerce.

13 V.

14 VIOLATION ALLEGED

15 26. Irvine Meadows, Pacific and Ogden, through its wholly
16 owned subsidiary Ogden Allied Leisure Services, Inc., have
17 negotiated and prepared for signature a document entitled
18 "Agreement and Plan of Merger" and related papers. The prepared
19 documents contemplate an acquisition of assets through a series of
20 transactions to be effected simultaneously that will result in
21 combining the assets and operations of Irvine Meadows and Pacific
22 under the ownership of a single entity, which will be a successor
23 limited partnership to Pacific. The current partners in Pacific
24 will own a 50% interest in the new entity. The current Irvine
25 Meadows partners will hold a 25% interest in the new entity.
26 Ogden, in return for a capital contribution of approximately
27 \$8 million, consisting of cash and a note, will own the remaining
28 25% interest. The current Pacific partners, on behalf of the new
Page 8 - COMPLAINT

1 entity, will then manage and operate both facilities. The parties
2 plan to consummate the combination of Irvine Meadows and Pacific
3 shortly after the stipulated waiting period ends at 12:01 a.m. on
4 July 20, 1990.

5 27. The effect of the combination may be substantially to
6 lessen competition, or to tend to create a monopoly, in the Orange
7 County concert amphitheater market in violation of Section 7 of
8 the Clayton Act in the following ways, among others:

- 9 a. Actual and potential competition between Irvine
10 Meadows and Pacific in supplying the use of concert
11 amphitheaters for concerts in Orange County will be
12 eliminated;
- 13 b. Competition generally in supplying the use of
14 concert amphitheaters for concerts in Orange County
15 may be substantially lessened.

16 28. The effects of the combination may be manifested in the
17 following ways, among others:

- 18 a. Artists may receive lower financial consideration
19 for performing at Orange County concert
20 amphitheaters;
- 21 b. Concertgoers may pay higher prices to attend
22 concerts and may have fewer concerts in Orange
23 County from which to choose.

24 PRAYER

25 1. That pending final adjudication of the merits of this
26 Complaint, a temporary restraining order and a preliminary
27 injunction be issued against the defendants preventing and
28 restraining each of them and all persons acting on their behalf

1 from taking any action, either directly or indirectly, in
2 furtherance of the proposed combination of Irvine Meadows and
3 Pacific;

4 2. That the proposed combination of Irvine Meadows and
5 Pacific be adjudged to be in violation of Section 7 of the Clayton
6 Act;


7 3. That the defendants be permanently enjoined from carrying
8 out any agreement, understanding, or plan, the effect of which
9 would be to combine the assets and operations of Irvine Meadows
10 and Pacific;

11 4. That the plaintiff have such other and further relief as
12 the Court may deem just and proper; and

13 5. That plaintiff recover the costs of this action.

14 Dated: 7/19/90

15 
16 JAMES F. RILL
Assistant Attorney General

17 
18 JUDY WHALLEY

19 
20 GARY R. SPRATLING

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