

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., U.S. District Court, E.D. New York, 1977-1 Trade Cases ¶61,389, (Dec. 27, 1976)

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United States v. United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc.

1977-1 Trade Cases ¶61,389. U.S. District Court, E.D. New York, No. 71 Civ. 609, Entered December 27, 1976, (Competitive impact statement and other matters filed with settlement: 41. *Federal Register* 32445, 54998).

Case No. 2167, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Motion Picture Theaters: Divestiture by Sale or Lease for Minimum Periods: Consent Decree.— A motion picture theater operator was required by a consent decree to divest by sale or lease (for minimum periods of 5 to 20 years) somewhat more than half of those motion picture theaters it acquired from a competitor in alleged violation of [Sec. 7 of the Clayton Act](#). A trustee would be appointed to complete divestiture, if not accomplished within 5 years. Acquisitions of theaters would be prohibited for 10 years without government or court approval.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Bernard Wehrmann, Ralph T. Giordano, Erwin L. Atkins, and Charles W. Brooks, Attys., Dept. of Justice. **For defendants:** Wachtell, Lipton, Rosen & Katz.

Final Judgment

Mishler, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 20, 1971, and the defendants United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., having appeared and filed their answer to the complaint denying the material allegations thereof and raising certain affirmative defenses and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party 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 without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. §18), commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "UATC" means defendants United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., and each of their subsidiaries.

(B) "Eligible Purchaser" means any person or persons, proposing to purchase, lease or sublease any theatre for theatre purposes, to which the plaintiff, after notice, does not object, or if the plaintiff does object, of which the Court approves.

(C) "Person" means any individual, partnership, corporation or other business or legal entity other than UATC or its subsidiaries.

(D) "Non-theatre purpose" means that the proposed use of a theatre will be for other than the exhibition of feature motion pictures except on a possible temporary interim basis.

(E) "New York Metropolitan Area" means the five Counties of the City of New York, the Counties of Westchester, Rockland, Nassau and Suffolk in the State of New York, the Counties of Bergen, Essex, Hudson, Passaic and Union in the State of New Jersey and the County of Fairfield in the State of Connecticut.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to UATC, its subsidiaries, successors and assigns, to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any Eligible Purchaser who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered a successor or assign of UATC.

IV

[*Divestiture*]

(A) UATC is ordered and directed to divest to Eligible Purchasers, within 60 months from the date of entry of this Final Judgment, each of the theatres listed in Appendix A to this Final Judgment [not reproduced--CCH].

(B) Divestiture of the theatres listed in Appendix A shall be accomplished in the following ways:

(1) UATC may sell or, subject to the provisions of Section IV(C) of this Final Judgment, leave any such theatre owned by it in fee;

(2) UATC may assign the lease of any such theatre of which it is the lessee or, subject to the provisions of Section IV(E) of this Final Judgment, sublease such theatre.

(C) With respect to any theatre which is divested by lease (hereinafter "Lease"):

(1) The term of the Lease shall be not less than 20 years for any theatre listed in Group 1 of Appendix A, except that the Lease shall grant the lessee the right to terminate the Lease effective as of the end of the tenth year of the term; not less than 10 years for any theatre listed in Group 2; and not less than 5 years for any theatre listed in Group 3. (Such periods of 20, 10 and 5 years are referred to hereinafter as the "Minimum Lease Term".)

(2) UATC may, during the Minimum Lease Term, sell, lease, or otherwise dispose of its fee in any such theatre to any person for any use, provided that such sale, lease or other disposition is made subject to the Lease and the rights of the lessee under the Lease continue until the termination of the Lease.

(3) The Lease for any theatre listed in Group 1 or Group 2 of Appendix A, which is entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment, may provide that if the fee is purchased by an Eligible Purchaser during the Minimum Lease Term, such Lease may be terminated at the option of the Eligible Purchaser. No such provision, however, may be contained in any Lease negotiated by a trustee pursuant to Section V of this Final Judgment.

(4) The Lease for any theatre listed in Group 3 of Appendix A, which is entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment, may provide that UATC may terminate the Lease during the Minimum Lease Term if UATC accepts a bona fide offer by a third person to purchase the fee for non-theatre purposes or to lease the fee for non-theatre purposes for a term of not less than 20 years and such a sale or lease is consummated. UATC may, however, exercise its right of termination under such a provision only to the extent permitted by paragraph D of this Section IV. No such provision may be contained in any Lease negotiated by a trustee pursuant to Section V of this Final Judgment.

(5) The Lease shall grant the lessee an option as provided for in the Lease to purchase the fee at any time during the term of the Lease, provided that such option shall terminate if the lessee, within 60 days after written notice to it by UATC of receipt of a bona fide offer by a third person to purchase the fee, including any offer contemplated by subparagraphs (2), (3), or (4) of this Section IV(C), shall refuse to purchase the fee upon the same economic terms offered by the third person. Such option, however, shall be reinstated if the sale to the third person is not consummated.

(D) As to not more than 2 of the theatres listed in Group 3 of Appendix A, UATC, at any time after the entry of this Final Judgment and whether before or after the making of a Lease as to such theatre, shall have the right to accept a bona fide offer to purchase the fee for non-theatre purposes or to lease the fee for non-theatre purposes for a term of not less than 20 years, and UATC may terminate the Lease of any such theatre upon the consummation of such sale or lease if the Lease was entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment. In no event may UATC, pursuant to the provisions of this paragraph D, sell or lease for non-theatre purposes, the fee of more than 2 of the theatres listed in Group 3 of Appendix A, but nothing herein shall be construed to abrogate any rights of UATC to dispose of its fee ownership in any such theatre pursuant to the provisions of subparagraph (2) of Section IV(C), and subparagraphs (2) and (3) of Section VII(C) of this Final Judgment.

(E) With respect to any theatre which is divested by sublease (hereinafter "Sublease"), such Sublease shall be for the entire remaining present term of the master lease less one day provided that if the remaining term of the master lease is in excess of 10 years the Eligible Purchaser may, at its option, enter into a Sublease for a period of not less than 10 years, with a right effective as of the end of the Sublease term to renew for the remaining term of the master lease less one day or any portion thereof (such periods are hereinafter referred to as the "Minimum Sublease Term").

(F) UATC shall make known the availability of the theatres listed in Appendix A by customary and usual means, including appropriate advertising. UATC shall furnish, on an equal and nondiscriminatory basis, to all bona fide prospective purchasers who so request, all necessary information regarding said theatres and shall permit them to make such inspection of the facilities and operations of the theatres as is reasonably necessary for a prospective purchaser to advise itself properly.

(G) Ninety days after the date of entry of this Final Judgment and every 90 days thereafter until UATC has divested each of the theatres listed in Appendix A, UATC shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Section IV. Each report shall include the name and address of each person who, during the preceding 90 days, had made an offer, expressed a desire, or entered into negotiations to purchase, lease or sublease any theatre, together with full details of same. Each report shall also include the name and address of each person who, during the preceding 90 days, UATC has sought to interest in the purchase, lease or sublease of any theatre, together with full details of same.

(H) At least 60 days before the consummation, pursuant to this Section IV, of a divestiture to a proposed Eligible Purchaser of any theatre listed in Appendix A, UATC shall furnish in writing to the plaintiff the name and address of the proposed Eligible Purchaser, together with the terms and conditions of the proposed divestiture. At the same time, UATC shall list the name and address of each person not previously reported who offered or expressed a desire to purchase, lease or sublease such theatre, together with full details of same. Within 20 days of the receipt of this information, the plaintiff may request in writing additional information concerning the transaction and parties thereto. If no request is made for additional information, the plaintiff shall advise UATC

in writing no later than 20 days prior to the scheduled consummation date whether it has any objections to the proposed divestiture. If a request for additional information is made, the plaintiff shall advise UATC in writing within 30 days after receipt of all such information or within 30 days after receipt of a statement in writing from UATC that it does not have the requested information, whether it has any objections to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. If the plaintiff does so object, the proposed divestiture shall not be consummated unless UATC obtains approval from the Court or the plaintiff's objection is withdrawn.

V

[*Trustee--Failure to Divest*]

If UATC does not divest itself, in accordance with the provisions of this Final Judgment, of each of the theatres listed in Appendix A within 60 months from the date of entry of this Final Judgment, the Court shall on application of the plaintiff appoint a trustee for the purpose of divesting the remaining theatres in accordance with the provisions of this Final Judgment. The trustee shall dispose of each of the remaining theatres by sale, assignment, Lease or Sublease. Any such Lease or Sublease shall be for the applicable Minimum Lease or Sublease Term. The trustee shall act with all deliberate speed to dispose of each of the remaining theatres. Each divestiture by the trustee shall be in accordance with the provisions of this Final Judgment and subject to prior approval of the Court after the parties have had an opportunity to be heard with respect to each such proposed divestiture and the price and terms thereof. The trustee shall serve, at the cost and expense of UATC, on such terms and conditions as the Court sees fit. The appointment of a trustee by the Court shall not preclude UATC itself from divesting any of the remaining theatres in accordance with the provisions of this Final Judgment.

VI

[*Use; Rental*]

(A) Any contract of sale, assignment, Lease, or Sublease to an Eligible Purchaser of a theatre listed in Appendix A shall require the Eligible Purchaser to file with this Court its representation that it proposes to operate the theatre for the exhibition of feature motion pictures.

(B) No Lease or Sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the Lease or Sublease or of any other theatre, provided, however, that rental provisions may be based upon a percentage of the gross receipts of the leased or subleased theatre.

VII

[*Terms of Divestiture*]

(A) UATC shall be in full control of the operations and management of each theatre listed in Appendix A until the theatre has been divested in accordance with the provisions of this Final Judgment. Pending initial divestiture, UATC shall continue to operate each theatre for the exhibition of feature motion pictures and shall not close or curtail its operations without the prior written consent of the plaintiff or, if such consent is refused, upon the approval of the Court.

(B) UATC shall not participate in any way, directly or indirectly, in the management, operation or control of any theatre listed in Appendix A after it has been divested pursuant to this Final Judgment, nor shall UATC book or buy feature motion pictures for any such theatre after it has been divested. Where a theatre has been divested by Lease or Sublease, these prohibitions shall be expressly set forth in the Lease or Sublease.

(C) Notwithstanding the provisions of paragraph (B) of this Section VII:

(1) UATC may accept and enforce a bona fide lien, mortgage or other form of security received by it to secure full payment of any unpaid portion of the purchase price. UATC may also enforce the terms and conditions of any Lease or Sublease in accordance with its provisions or as provided by law, and may exercise the rights of a

lessor or sublessor in the event of a default. If two or more theatres are divested to a single Eligible Purchaser, such Lease, Sublease, lien, mortgage, or other form of security may not provide that a default by the lessee or mortgagor with respect to one such theatre shall constitute a default with respect to all such theatres, provided, however, that such provision may be contained in any such Lease, Sublease, lien, mortgage, or other form of security, if reasonably necessary to the security of UATC.

(2) If UATC, by enforcement of any bona fide lien, mortgage or any other form of security interest reacquires ownership, possession or control of any divested theatre or in the event of reacquisition or repossession by UATC prior to the expiration of the Minimum Lease or Sublease Term of a leased or subleased theatre divested hereunder, UATC shall promptly notify the plaintiff in writing and shall divest such theatre by sale, assignment, Lease or Sublease to an Eligible Purchaser within 12 months of reacquisition or repossession in accordance with the provisions of this Final Judgment. The minimum duration of any such subsequent Lease or Sublease shall be the applicable Minimum Lease or Sublease Term less the period of time such theatre was operated by an Eligible Purchaser prior to reacquisition or repossession by UATC. If UATC is unable to divest any such theatre to an Eligible Purchaser within 12 months of reacquisition or repossession, UATC may, with the prior written consent of the plaintiff, or, if such consent is refused, upon approval of the Court, sell, lease or otherwise dispose of such theatre to any person for non-theatre purposes. In no event may UATC, directly or indirectly, operate such theatre for more than 18 months after reacquisition or repossession by UATC without the prior written consent of the plaintiff or, if such consent is refused, upon approval of the Court.

(3) If UATC reacquires or repossesses any divested theatre after the expiration of the applicable Minimum Lease or Sublease Term, or if it reacquires or repossesses any theatre disposed of by sale or lease pursuant to Section IV(D) of this Final Judgment, UATC may sell, lease or otherwise dispose of any such theatre to any person for any purpose, but in no event may UATC, directly or indirectly, operate such theatre for more than 18 months after such reacquisition or repossession without the prior written consent of the plaintiff or, if such consent is refused, upon approval of the Court.

VIII

[*Acquisition Ban*]

(A) UATC is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring any part of the assets or stock of any operating motion picture theatre in the Counties of Queens, Nassau and Suffolk in the State of New York, other than the Whitman Theatre located in Huntington, New York, except with the prior written consent of the plaintiff, or if such consent is refused, then upon the approval by this Court after a determination by this Court that the effect of any such acquisition of assets or stock will not be to substantially lessen competition or tend to create a monopoly in the exhibition of feature motion pictures in any section of the country.

(B) For a period of 10 years from the date of entry of this Final Judgment, UATC is ordered and directed to give the plaintiff written notice of its intention to acquire any part of the assets or stock of any operating motion picture theatre in any of the Counties of the New York Metropolitan Area, other than the Counties of Queens, Nassau and Suffolk, at least 60 days before the closing of any such acquisition.

IX

[*Inspection and Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, UATC shall permit duly authorized representatives of the Department of Justice on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice, subject to any legally recognized privilege:

(1) Access during the business hours of UATC, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or under the control of UATC which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of UATC and without restraint or interference from it, to interview officers or employees of UATC, any of whom may have counsel present, regarding such matters.

(B) UATC shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Section IX of this Final Judgment shall be divulged by a 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 determining or securing compliance with this Final Judgment or as otherwise required by law.

X

[Retention of Jurisdiction]

Jurisdiction of this action 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 or 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, and for the enforcement of compliance therewith and punishment of violations thereof.

XI

[Public Interest]

Entry of this Final Judgment is in the public interest.