

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Columbia Artists Management Inc.; Community Concerts Inc.; National Concert and Artists Corporation; and Civic Concert Service, Incorporated., U.S. District Court, S.D. New York, 1955 Trade Cases ¶68,173, (Oct. 20, 1955)

United States v. Columbia Artists Management Inc.; Community Concerts Inc.; National Concert and Artists Corporation; and Civic Concert Service, Incorporated.

1955 Trade Cases ¶68,173. U.S. District Court, S.D. New York. Civil Action No. 104-165. Filed October 20, 1955. Case No. 1262 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets—Exclusion from Trade—Management of Concert Artists and Organizers of Audience Associations.

—Managers of concert artists and their affiliated organizers of audience associations were each prohibited by a consent decree from combining or conspiring to (1) allocate or divide markets or otherwise refrain from competition, or leave any person free from competition, in any market in the organization or maintenance of audience associations, (2) exclude any person from, or refrain or limit any person in, the organization of audience associations or the management of artists, and (3) refrain from competition, or leave any person free from competition, for the management of artists.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Refusal to Deal.—Managers of concert artists and their affiliated organizers of audience associations were each prohibited by a consent decree from (1) refusing to make available any artist managed by the defendant to any financially responsible audience association at the same fee charged by such artist to comparable audience associations where the artist is reasonably available for the desired performance and from (2) refusing to make available to any financially responsible concert service any artist managed by such defendant and reasonably available for the desired performance at the same margin allowed to the defendant or its affiliated concert service by that artist for a performance for the same fee.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Tying and Exclusive Dealing Arrangements.—Managers of concert artists and their affiliated organizers of audience associations were each prohibited from (1) making available the service of any artist on the condition that the service of any other artist be contracted for, (2) conditioning the organization of any audience association upon the understanding that the association present a specified number of concerts in excess of three, and (3) requiring that any reasonably available artist not perform before any audience association not organized by such defendant or its affiliate.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Misrepresentations.—Managers of concert artists and their affiliated organizers of audience associations were each prohibited by a consent decree from knowingly misrepresenting to any audience association or concert service the fee, availability, reliability, or reputation of any artist.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Cutting.—Managers of concert artists and their affiliated organizers of audience associations were each prohibited from offering any artist managed by such defendant to any audience association for less than the artist's established fee for the purpose of dissuading the association from engaging an artist not managed by such defendant.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Acquisitions of Stock or Assets.—Managers of concert artists and their affiliated organizers of audience associations were each prohibited by a consent decree from acquiring any of the assets, business or good will of, or stock or other financial interest in, any concert service, unless the defendant shall show to the satisfaction of the court that such acquisition may not tend to restrain or lessen competition in the business of organizing audience associations in any section of the United States.

Department of Justice Enforcement and Procedure—Consent Decrees—Modification by Government.—

A consent decree, which was entered against managers of concert artists and their affiliated organizers of audience associations, provided that it being the purpose of the decree to facilitate and increase the booking of independently managed artists by audience associations organized or maintained by any of the defendants and to promote competition between defendants and between and among independent managers and defendants in the management of artists, the Government may at any time after five years from the date of the entry of the decree petition the court to determine whether such purposes have been achieved and, if the court is satisfied that such purposes have not been achieved, the defendant shall be prohibited, upon such terms as the court may deem appropriate, from engaging in the concert service business.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Furnishing of Information.—Organizers of audience associations which were affiliated with managers of concert artists were each ordered by a consent decree (1) to place an advertisement (each year in a specified issue of a named publication) informing managers of concert artists that such defendant will furnish to all audience associations which it organizes or maintains the information submitted to it within the two months next succeeding publication, by any manager with respect to the general availability and established audience association fee of any artist managed by him who desires to perform before audience associations and agrees to allow to the defendant a margin equal to the customary margin allowed to such defendant by other artists with comparable fees; (2) to furnish to each audience association which shall be organized or maintained by such defendant all information furnished to such defendant pursuant to (1) above; (3) to prepare and maintain, annually for ten years, records as to each audience association organized and maintained by such defendant which shall have scheduled a membership campaign; (4) to maintain and make available the above records at its principal office for inspection and copying by any manager who has submitted information to the defendant pursuant to (1) above; and (5) to use its best efforts to obtain for any audience association organized or maintained by such defendant any artist selected by such association and as to whom information was furnished to such defendant pursuant to (1) above and to execute an agreement for the performance of such artist without any delay after completion of the membership campaign and after determining the availability of the artist and obtaining the necessary authority from the artist or his manager. The organizers as well as the affiliated managers of concert artists were each prohibited from preventing any manager giving information to such defendant from meeting with any audience association to discuss artists to be engaged by such association.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, and W. D. Kilgore, Jr., Worth Rowley, Richard B. O'Donnell, Harry G. Sklarsky, Louis Perlmutter, and Francis E. Dugan.

For the defendants: Cravath, Swaine & Moore, by George B. Turner, for Columbia Artists Management Inc. and Community Concerts Inc.; and McAloon & Hirschberg, by Nathan Hirschberg, for National Concert and Artists Corporation and Civic Concert Service, Inc.

Final Judgment

SIDNEY SUGARMAN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on October 20, 1955, and the defendants herein having appeared and filed their answers to the complaint denying the substantive allegations thereof; and the plaintiff and said defendants by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issues;

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

It is hereby ordered, adjudged and decreed, as follows:

I.

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint herein states a claim upon which relief could be granted against the defendants under Sections 1 and 2 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.

[Definitions]

As used in this Final Judgment:

- (A) "National" shall mean defendant National Concert and Artists Corporation, a New York corporation;
- (B) "Civic" shall mean defendant Civic Concert Service, Incorporated, a New York corporation;
- (C) "Columbia" shall mean defendant Columbia Artists Management Inc., a New York corporation;
- (D) "Community" shall mean defendant Community Concerts Inc., a New York corporation;
- (E) "Artist" shall mean a concert, recital, oratorio, opera or ballet artist or attraction;
- (F) "Audience association" shall mean a non-profit association organized for the purpose of presenting concerts (normally a minimum of three in any season) in one locality, financed by membership dues subscribed in advance;
- (G) "Concert service" shall mean a person who is commercially engaged in organizing and maintaining audience associations and who, without charge to such associations, either himself acts as a field representative or supplies one or more field representatives for that purpose;
- (H) "Manager" shall mean a person who, for a commission, arranges for the performances of an artist or represents or otherwise acts as agent for an artist in connection with performances by such artist;
- (I) "Local manager" shall mean a person, other than an audience association, engaged in presenting concerts;
- (J) "Margin" shall mean the portion of an artist's established fee which such artist authorizes a concert service to retain in consideration of the expenses incurred in organizing and maintaining audience associations;
- (K) "Person" shall mean an individual, partnership, firm, corporation, association or other business or legal entity.

III.

[Applicability of Judgment]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns and to each of its officers, directors, agents, employees and to all other persons acting under, through or for such defendant.

IV.

[Allocation of Markets Prohibited]

Each defendant is enjoined and restrained from combining or conspiring, or from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any other defendant or any other person to:

- (A) Allocate or divide territories or markets or otherwise refrain from competition, or leave any person free from competition, in any territory, field or market in the organization or maintenance of audience associations;
- (B) Exclude any person from, or refrain or limit any person in, the organization or maintenance of audience associations or the management of artists; or
- (C) Refrain from competition, or leave any person free from competition, for the management of artists.

V.

[*Specific Relief*]

Civic and Community are each ordered and directed:

- (A) To place an advertisement each year in an October issue of *Musical America*, or similar publication, informing managers that such defendant will furnish to all audience associations which it organizes or maintains the information submitted to it within the two months next succeeding publication, by any manager with respect to the general availability and established audience association fee of any artist managed by him who desires to perform before audience associations and agrees to allow to the defendant a margin equal to the customary margin allowed to such defendant by other artists with comparable fees;
- (B) To furnish to each audience association which shall be organized or maintained by such defendant all information furnished to such defendant pursuant to subsection (A) of this Section V;
- (C) To prepare and maintain, annually for ten years after entry of this Final Judgment, records as to each audience association organized and maintained by such defendant which shall have scheduled a membership campaign, such records to contain the names and addresses of the president and correspondent of the association and, within ten days after it is set, the date when the membership campaign is scheduled to be held;
- (D) To maintain and make available the above records at its principal office, on at least one day per week during regular business hours, for inspection and copying by any manager, or his authorized agent, who has submitted information to the defendant pursuant to subsection (A) hereof, and who will agree (1) to keep confidential the information obtained from the records, (2) to use such information only in connection with artists as to whom information has been submitted to such defendant pursuant to subsection (A) above, and (3) to advise such defendant, prior to offering his artist to any audience association organized or maintained by such defendant at a fee less than that artist's established fee, that such defendant is authorized to offer said artist at the lower fee;
- (E) To use its best efforts to obtain for any audience association organized or maintained by such defendant any artist selected by such association and as to whom information was furnished to such defendant pursuant to subsection (A) hereof and to execute an agreement for the performance of such artist without any delay after completion of the membership campaign and after determining the availability of the artist and obtaining the necessary authority from the artist or his manager.

VI.

[*Practices Prohibited*]

Each defendant is enjoined and restrained from:

- (A) Refusing to make available any artist managed by the defendant to any financially responsible audience association at the same fee charged by such artist to comparable audience associations where the artist is reasonably available for the desired performance;
- (B) Knowingly misrepresenting to any audience association or concert service the fee, availability, reliability or reputation of any artist;
- (C) Offering any artist managed by such defendant to any audience association for less than the artist's established fee for the purpose of dissuading the association from engaging an artist not managed by such defendant;
- (D) Refusing to make available to any financially responsible concert service any artist managed by such defendant and reasonably available for the desired performance, at the same margin allowed to the defendant or its affiliated concert service by that artist for a performance for the same fee;
- (E) Making available the service of any artist on the condition that the service of any other artist be contracted for;
- (F) Conditioning the organization of any audience association upon the agreement or understanding that the association present a specified number of concerts in excess of three;

(G) Requiring, directly or indirectly, that any reasonably available artist not perform before any audience association not organized by such defendant or its affiliate;

(H) Acquiring, directly or indirectly, any of the assets, business or good will of, or stock or other financial interest in, any concert service, unless such defendant shall upon reasonable notice to the plaintiff, show to the satisfaction of this Court that such acquisition may not tend to restrain or lessen competition in the business of organizing audience associations in any section of the United States;

(I) Preventing, or attempting to prevent, any manager giving information to such defendant pursuant to subsection (A) of Section V herein from meeting with any audience association to discuss artists to be engaged by such association.

VII.

[*Modification*]

It being the purpose of this Final Judgment to facilitate and increase the booking of independently managed artists by audience associations organized or maintained by any of the defendants and to promote competition between defendants and between and among independent managers and defendants in the management of artists, the plaintiff may at any time after five years from the date of entry of this Final Judgment petition this Court to determine whether such purposes have been achieved and, if the Court is satisfied that such purposes have not been achieved, the defendants shall be prohibited, upon such terms as the Court may deem appropriate, from engaging in the concert service business.

VIII.

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege,

(a) reasonable 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 such defendant, relating to any of the matters contained in this Final Judgment, and

(b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendants, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX.

[*Jurisdiction Retained*]

Jurisdiction is retained 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 or for the modification of any of the provisions thereof, the enforcement of compliance therewith and the punishment of violations thereof.