

Analysis to Aid Public Comment
In the Matter of the American Guild of Organists
File No. 151-0159

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the American Guild of Organists (hereinafter “the AGO”). The Commission’s complaint (“Complaint”) alleges that the AGO, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining provisions in its Code of Ethics that restrain AGO members from freely seeking or accepting work, and by recommending that its members use standard fees and approaches to determine compensation for members’ services. This likely raised prices for consumers seeking to employ organists for special occasions, as well as the organizations that employed organists.

The proposed Consent Agreement requires the AGO to cease and desist from restraining competition among its members, including by restricting members’ freedom to seek or accept work, or by restraining price competition among members.

The Commission anticipates that accepting the proposed order, subject to final approval, contained in the Consent Agreement, will resolve the competitive issues described in the Complaint. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“the Proposed Order”).

This Analysis to Aid Public Comment seeks to invite and facilitate public comment. It does not constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by the AGO that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent and the Provisions at Issue

The AGO is a non-profit trade association. The AGO has approximately 15,000 members organized in more than 300 chapters throughout the United States and abroad. The AGO membership includes organists and choral conductors. The AGO’s members provide services as organists and choral conductors for a fee.

The AGO maintains a Code of Ethics applicable to the commercial activities of its members. The Code of Ethics states in part that,

“Members shall not seek or appear to be seeking employment for themselves, a student, or a colleague, in a position held by someone else . . .” and

“Members shall obtain the approval of the incumbent musician before accepting an engagement for a wedding, funeral, or other service requested by a third party. In such cases, the incumbent should receive his/her customary fee, and the third party is expected to provide it. It is the responsibility of the guest member to inform the third party of this rule.”

The AGO adopted standardized documents relating to compensation, including fee schedules, a salary guide, worksheets for calculating work performed, and model contract provisions for members to (hereinafter “compensation guidelines”). The fee schedules cover the fees to be charged for such work as rehearsals, performing as a substitute, weddings, funerals, rehearsals, contracting additional musicians, mileage reimbursement, and cancelled services, and include a formula for its chapters and members to use for geographic adjustment of the compensation baselines.

B. The Anticompetitive Conduct

The FTC investigated the provisions of the AGO’s Code of Ethics and compensation guidelines that allegedly restrained competition and harmed consumers, and which had generated consumer and organist complaints. The Complaint alleges that the AGO violated Section 5 of the Federal Trade Commission Act by agreeing to restrain competition among organists and choral conductors. The AGO’s adoption and enforcement of the Code of Ethics and compensation guidelines represent agreements among competitors not to compete. The Code of Ethics limits the freedom of organists and choral directors to seek or accept positions and engagements. The compensation guidelines limit price competition and impose additional costs on consumers. For consumers who wanted to employ an organist of their choice for a wedding, funeral, or other occasion, the AGO’s Code of Ethics included a provision that had the effect of requiring some consumers to pay for the services of two organists – the organist they chose and hired, and the incumbent organist of the venue location even though only the first organist performed. The provisions and enforcement of the AGO’s Code of Ethics, as well as its compensation guidelines, likely increased prices for consumers and those that employed organists as choral directors or in permanent organist positions.

The AGO adopted the Code of Ethics, educates members about the Code of Ethics, exhorts its members to follow the Code of Ethics, and enforces the Code of Ethics. The AGO may expel a member that fails to abide by the Code of Ethics.

The AGO instructs its chapters to use AGO’s compensation schedules and formulas to develop regionally applicable compensation schedules. AGO chapters used the AGO compensation schedules and formulas to develop and publicize regionally applicable compensation schedules. AGO members used the compensation schedules to determine what to charge for their services.

The purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of the AGO has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among organists and choral directors.

II. The Proposed Order

The Proposed Order has the following substantive provisions.

Paragraph II of the Proposed Order requires the AGO to cease and desist from restraining or declaring unethical, interfering with, or advising against price competition by members, and from creating or recommending lists, guidelines, or model contract provisions for its members to use to determine fees or compensation. It also requires the AGO to cease and desist from restricting members freedom to seek or accept positions or engagements. Paragraph II also prohibits the AGO from accepting as a chapter or maintaining a relationship with any chapter that the AGO knows engages in conduct prohibited by the Proposed Order.

Paragraph III of the Proposed Order requires the AGO to remove from its organization documents and website any statement inconsistent with the Proposed Order, including the challenged Code of Ethics restrictions. The AGO must publicize to its members, new members, leaders, employees, and the public the changes the AGO must make to the Code of Ethics, and a statement describing the Consent Agreement. Paragraph III also requires the AGO to terminate recognition of chapters that fail to certify Compliance with the Proposed Order, and chapters that the AGO learns have engaged in any prohibited practice, if such chapters do not commit to ending such practices.

Paragraph IV of the Proposed Order requires the AGO to design, maintain, and operate an antitrust compliance program. Paragraphs V-VII contain standard reporting, notification, and cooperation requirements.

The Proposed Order will expire in 20 years; the Proposed Order limits certain provisions to a period of five years.