

Complaint

IN THE MATTER OF

AMERICAN GUILD OF ORGANISTSCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4617; File No. 151 0159**Complaint, May 26, 2017 – Decision, May 26, 2017*

This consent order addresses American Guild of Organists's Code of Ethics that restrains AGO members from freely seeking or accepting work, and recommends that its members use standard fees and approaches to determine compensation for members' services. The 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 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. The consent order 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.

Participants

For the *Commission*: Karen A. Mills.

For the *Respondent*: Claudia Higgins, Kaye Scholer, LLP.

COMPLAINT

The Federal Trade Commission ("Commission"), pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, having reason to believe that the American Guild of Organists, Inc. ("Respondent" or "AGO"), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

Complaint

I. NATURE OF THE CASE

1. This case challenges the actions of a professional association of organists and choral conductors that have the purpose and effect of restraining competition among its members. The association directs its members not to seek contracts and business relationships where doing so would displace an existing service provider. And the association urges its members to forgo price competition, and instead to seek the terms of compensation specified by the association.

II. RESPONDENT

2. Respondent American Guild of Organists was originally chartered as a corporation by the New York State Educational Department and the University of the State of New York in 1896, and is organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at 475 Riverside Drive, Suite 1260, New York, NY 10115.

3. Respondent is a national association of organists and choral conductors with approximately 15,000 members organized in more than 300 chapters throughout the United States and abroad.

4. Many of Respondent's members provide organ performance, choral conducting, or teaching services for a fee. Except to the extent that competition has been restrained as alleged herein, many of Respondent's members have been and are now in competition among themselves and with other organists and choral conductors.

III. JURISDICTION

5. Respondent conducts business for the pecuniary benefit of its members and is therefore a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

6. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting commerce as

Complaint

“commerce” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. AGO’S CONDUCT IN RESTRAINT OF TRADE**A. AGO RESTRICTIONS ON COMPETITION**

7. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by:

- a. Restricting members’ freedom to seek or to accept positions and engagements; and
- b. Developing, adopting, issuing, publishing, recommending, and promoting the use by its members of standard fees and approaches to determine compensation for members’ services.

8. Respondent maintains a Code of Ethics applicable to the commercial activities of its members. The Code of Ethics is considered to be binding upon all voting members in good standing.

9. Specifically, Respondent’s Code of Ethics adopted on October 23, 1933, as revised through October 4, 2014, requires:

“RULE 1. Members shall promote good working relationships within the American Guild of Organists and shall respect the employment of colleagues. Members shall address differences between themselves and other members by following the procedures outlined in the Discipline.”

“RULE 2. Members shall not seek or appear to be seeking employment for themselves, a student, or a colleague, in a position held by someone else”

“RULE 3. Members shall obtain the approval of the incumbent musician before accepting an engagement for a wedding, funeral, or other

Complaint

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 Discipline” refers to the AGO’s enforcement regime for the association’s Code of Ethics and other standards of conduct. An “incumbent musician” is a musician member who has a contract or other arrangement with a school, church, or other venue.

10. Respondent has developed, adopted, issued, published, recommended, and promoted a schedule of compensation to be used by members to determine or secure compensation for their services. Respondent’s schedule specifies fees for various types of services (*e.g.*, performance at weddings, funerals, religious ceremonies) and for various time commitments (*e.g.*, full time, half time) and experience levels. Respondent’s schedule also specifies standard mileage charges and rates for travel to and from locations where services are provided.

11. Respondent’s schedule of compensation identifies one U.S. city as a basing point and specifies adjustment factors to accommodate regional differences in the cost of living. Respondent’s Chapters use Respondent’s schedule to develop regionally-applicable schedules of compensation.

12. Respondent generally updates its schedule of compensation annually.

B. AGO EXHORTS MEMBERS TO REFRAIN FROM COMPETING

13. Respondent has provided its members with interpretations of and answers to questions about its Code of Ethics. For example, regarding Rule 2, Respondent published the following interpretation and advice:

“Question: Can a member circulate a written announcement to prospective religious institution

Complaint

employers having incumbent employees stating that s/he is looking for employment?

Answer: No.”

14. Regarding Rule 3, Respondent advised its members not to offer their services to a prospective customer without permission from an incumbent organist, and to inform prospective customers that the customer must pay a fee to both organists, even though only one would provide services.

15. Respondent developed and published model contract provisions that are consistent with the Code of Ethics and with the schedule of compensation.

C. AGO’s ENFORCEMENT REGIME

16. Respondent has adopted a Code of Professional Standards to guide members in fulfilling their obligations. The section of the Code of Professional Standards entitled “Respect for Colleagues” states, “Members address differences with other members of the American Guild of Organists by following the procedures outlined in the Discipline.”

17. Respondent’s Discipline, most recently amended on January 23, 2015, prescribes that “[t]he *Discipline* is to be used when an individual member of the AGO or an AGO Chapter Executive Committee wishes to file a complaint [with the AGO] against another Member for a violation of the *Code of Ethics*,” and specifies that remedies may include censure, written reprimand, requiring a letter of apology, requiring payment of compensation to another member for lost income, and expulsion from membership.

V. VIOLATION CHARGED

18. The purpose, effect, tendency, or capacity of the combination, agreement, acts, and practices alleged in Paragraphs 7 through 17 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among organists and choral directors, and by

Decision and Order

depriving consumers and others of the benefits of free and open competition among organists and choral directors.

19. The combination, agreement, acts, and practices alleged in Paragraphs 7 through 17 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-sixth day of May, 2017, issues this Complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the American Guild of Organists (“Respondent” or “AGO”) and Respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

Decision and Order

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the public comments received pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order (“Order”):

1. Respondent American Guild of Organists is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at 475 Riverside Drive, Suite 1260, New York, NY 10115.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” or “AGO” means the American Guild of Organists, its directors, boards, officers, employees, Leaders, agents, representatives, councils, committees, foundations, divisions, Chapters, successors, and assigns.
- B. “Antitrust Compliance Officer” means a person appointed under Paragraph IV.A. of this Order.

Decision and Order

- C. “Antitrust Counsel” means a lawyer admitted to practice law in one or more of the judicial districts of the courts of the United States.
- D. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et. seq.*, the Sherman Act, 15 U.S.C. § 1 *et. seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
- E. “Certification” means the document attached to this Order as Appendix B.
- F. “Chapter” means any regional or district association of organists that is recognized by the AGO as a chapter.
- G. “Code of Ethics” means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.
- H. “FTC Settlement Statement” means the statement attached to this Order as Appendix A.
- I. “Leaders” means the AGO’s National Council, National and Regional Officers, Councillors, Conveners, and Chapter Deans.
- J. “Member” means a member of the AGO, including but not limited to, voting members, non-voting members, general members, independent members, certificated members, national subscribing members, national honorary members, Chapter members, and any other classes or sub-classes of members.
- K. “Notification Date” means the date on which Respondent makes the notification required by Paragraph III.A.3. of this Order.
- L. “Organization Documents” means any documents relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, operating procedures, Chapter Management Handbooks, Chapter Operating

Decision and Order

Procedures, Codes of Ethics, Codes of Professional Standards, grievance procedures, compensation guides or fee schedules, model contract provisions, policy statements, interpretations, commentaries, guidelines, and brochures.

- M. “Regulating” means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent’s activities as a professional association in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from:

- A. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition for the provision of services provided by Members;
- B. Regulating, restricting, restraining, impeding, declaring unethical or unprofessional or interfering with, by any means, the efforts of any Member to seek or accept a position or engagement to provide services of an organist or choral conductor;
- C. Regulating, restricting, restraining, impeding, declaring unethical or unprofessional or interfering with, by any means, the efforts of any Member to provide services of an organist or choral conductor, including, but not limited to, encouraging, urging, or requiring that Members obtain the approval of an incumbent organist or choral conductor before accepting an engagement to provide services of an

Decision and Order

organist or choral conductor for a wedding, funeral, or any other engagement requested by a third party;

- D. Creating, issuing, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, or authorizing any list, guide, or schedule of compensation or fees, standard approach, or model contract, for Members to use when determining or securing compensation for their services, including but not limited to compensation or fee reports, guidelines, or suggested or recommended fees; and
- E. Accepting as a Chapter, or maintaining a relationship with any Chapter, that the AGO knows engages in conduct prohibited by Paragraphs II.A., II.B., II.C., or II.D.

III.**IT IS FURTHER ORDERED** that:

- A. No later than sixty (60) days from the date this Order is issued, Respondent shall:
 - 1. Post and maintain for five years on the Guild Document's page of the AGO's website, together with a link from Respondent's home or menu page that is entitled "Antitrust Compliance," the following items:
 - a. An announcement that states "The AGO agreed to change its Code of Ethics, and will not adopt or encourage its Members to follow or enforce any Code of Ethics provision relating to limitations on competition by organists or choral conductors to provide services, including price competition, that does not comply with the FTC Decision and Order."
 - b. The FTC Settlement Statement; and

Decision and Order

- c. A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter; and
 2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its Leaders, Chapters, Members, and employees; and
 3. Notify each Chapter that, as a condition of continued recognition by the AGO, such Chapter must execute and return a Certification to Respondent no later than one hundred eighty (180) days from the date Respondent notifies such Chapter.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
1. Remove from the AGO's Organization Documents and the AGO's website any statement or document that is inconsistent with Paragraph II of this Order, and
 2. Publish on the AGO's website any revisions of the AGO's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement.
- C. Respondent shall publish, in the font that is customarily used for feature articles:
1. Any revisions of the AGO's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "The American Organist" magazine; and
 2. The FTC Settlement Statement in the edition of the "The American Organist" magazine, or any successor publication, on or as close as possible to the first and second anniversary dates of first publication of the FTC Settlement Statement.

Decision and Order

- D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:
1. New Chapter no later than thirty (30) days after the date the organization becomes a Chapter;
 2. New Member no later than sixty (60) days after the date of commencement of the membership; and
 3. Member who receives a membership renewal notice at the time the Member receives such notice.
- E. Respondent shall:
1. Immediately terminate the recognition of any Chapter that fails to provide an executed Certification no later than one hundred eighty (180) days from the Notification Date and shall not permit the terminated Chapter to claim itself as a Chapter of the American Guild of Organists until such time as the Chapter provides an executed Certification; and
 2. Terminate for a period of one (1) year, no later than one hundred twenty (120) days after Respondent learns or obtains information that would lead a reasonable person to conclude that the Chapter has, following the date this Order is issued, engaged in any practice prohibited by Paragraphs II.A., II.B., II.C., or II.D of this Order; unless, prior to the expiration of the one hundred twenty (120) day period, said Chapter informs Respondent in a verified written statement that the Chapter has eliminated and will not reengage in such practice, and Respondent has no reasonable grounds to believe otherwise.
- F. Respondent shall include a copy of the FTC Settlement Statement, electronically or by other means, with the next dues statement sent to each Member after the date this Order is issued.

Decision and Order

- G. Respondent shall maintain and make available to Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any:
1. Action against any Member or Chapter taken in connection with the activities covered by Paragraph II of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 2. Complaint(s) received from any person relating to Respondent's failure to comply with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the Executive Director of Respondent after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, or a Leader of Respondent.
- C. For a period of five (5) years from the date this Order is issued, Respondent shall provide annual training to its Leaders and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.

Decision and Order

- D. Respondent shall implement policies and procedures to:
1. Enable persons to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 2. Discipline Leaders, Members, and employees for failure to comply fully with this Order.
- E. For a period of five (5) years from the date this Order is issued, Respondent shall:
1. Conduct an in-person presentation at each National or Regional meeting of the AGO that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws; and
 2. Provide an antitrust compliance guide to Chapters to use at each meeting of such Chapters that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and
- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

Decision and Order

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent;
or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, Members, Leaders, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on May 26, 2037.

Decision and Order

By the Commission.

Appendix A

Appendix A

(Letterhead of the AGO)

FTC Settlement Statement

Dear Member:

As you may know, the Federal Trade Commission (FTC) has conducted an investigation concerning certain provisions in the American Guild of Organists (AGO) Code of Ethics and other documents. The investigation focused on:

- A Code of Ethics provision that prohibits members from applying for a position held by someone else unless there has been a public announcement of a vacancy for that position;
- A Code of Ethics provision that requires a member engaged for a wedding, funeral, or other service to (1) obtain the approval of the incumbent musician before accepting, and (2) tell the party requesting the service to pay the incumbent his/her customary fee; and
- The AGO's publication of (1) lists and schedules of compensation and fees for its members to use, (2) standard methods and formulas for Chapters to provide to members for calculating compensation and fees, and (3) other model contract provisions.

The FTC has alleged that these practices violate the Federal Trade Commission Act because they unnecessarily restrict members of the AGO from competing with one another, restrict price competition, and deprive consumers of the benefit of competition.

To end the investigation expeditiously and to avoid disruption to its core functions, the AGO has voluntarily agreed to a Consent Agreement and entry of a final Decision and Order by the FTC. In doing so, however, the AGO has not admitted any law violation.

In general, the FTC's Order prohibits the AGO from:

- maintaining bylaws, a code of ethics, operational policies, or membership requirements that restrict its members from competing with one another for positions or for engagements for weddings, funerals, or other services, or competing in any other way, including on price;
- interfering with members' efforts to provide services and to compete on price;

Decision and Order

- publishing documents such as fee schedules and model contracts for members to use when determining or securing compensation for their services.

The Order also requires the AGO to establish an antitrust compliance program.

The AGO is in the process of revising its Code of Ethics and other documents and publications to comply fully with these requirements and is implementing a robust antitrust compliance program to ensure its leaders, members and Chapters do so as well.

In addition, some of the AGO Chapters currently have operational documents that contain provisions similar to those prohibited by the FTC's Order. The Order requires that the AGO may not accept or maintain a relationship with a Chapter that does not abide by the Order's provisions. Each Chapter will therefore need to review its code of ethics, operational policies and procedures, membership requirements, and documents relating to fees, compensation, or model contracts, and remove all prohibited provisions. Each Chapter will need to certify to the AGO that it has done so before a deadline set in the Order or the AGO will remove it as a Chapter.

When the FTC Order has been finalized, it will be distributed to Chapters and will be available on the AGO website. Click here to see a copy of the FTC's Order. It is also available on the Federal Trade Commission website at www.FTC.gov.

Sincerely yours,

James E. Thomashower
Executive Director

Michael Bedford
President

Decision and Order

Appendix B

Appendix B

Certification

Name of Chapter recognized by the American Guild of Organists

As a condition of being affiliated with the American Guild of Organists (AGO), the chapter named above (Chapter) makes the following representations to the AGO:

1. No Restrictions On Competing For Positions Or Engagement: As of the date this Certification is executed, the Chapter does not maintain in its rules, regulations, code of ethics, policies, procedures, newsletters or website any type of rule, interpretation, ethical ruling, guideline or recommendation that would restrict, restrain, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Chapter from competing for positions or engagements. Examples of the types of provisions that restrict competition include any of the following:

- Restricting a member from seeking or appearing to seek for the member, a student, or a colleague, a position occupied by another person.
- Restricting members seeking or appearing to seek a position for the member, a student, or a colleague from doing so without official and public declaration and announcement of a vacancy.
- Restricting members from accepting engagements to provide services as an organist or choral director unless they obtain approval of an incumbent.

2. No Restrictions On Competing On Price-Related Terms: As of the date this Certification is executed, the Chapter does not maintain in its rules, regulations, code of ethics, policies, procedures, newsletters or website any type of rule, interpretation, ethical ruling, guideline or recommendation which would restrict, restrain, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Guild from competing on price-related terms. Examples of the types of provisions that restrict competing on price-related terms include any of the following:

- Restricting price competition by members or encouraging members to restrict price competition.

Decision and Order

- Restricting members' compensation or fee arrangements or communications with third parties, or advising members what to communicate with each other or to third parties about compensation or fees, including compensation or fees for special services such as weddings or funerals.
- Adopting, publishing, or advising about compensation, fee lists, schedules, guidelines, or standard approaches to determining compensation or fees.
- Publishing a model contract or model contract provisions for members to use when determining compensation for their services.

On behalf of the Chapter named above, the undersigned officer certifies that all of the foregoing representations are accurate as of the date listed below:

Officer's Signature_____

Print Officer's Name_____

Officer's Title_____

Date_____

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

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.

Analysis to Aid Public Comment

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,

Analysis to Aid Public Comment

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.

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

**EMERSON ELECTRIC CO.
AND
PENTAIR PLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4615; File No. 161 0221
Complaint, April 27, 2017 – Decision, June 12, 2017*

This consent order addresses the \$3.15 billion acquisition by Emerson Electric Co. of certain assets of Pentair plc. The complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the United States market for switchboxes. The consent order requires Emerson to divest Pentair's switchbox manufacturer subsidiary, Westlock Controls Corporation, to Crane Co. no later than ten days after the Acquisition is consummated.

Participants

For the *Commission*: Ryan F. Harsch and Jonathan W. Platt.

For the *Respondents*: Ronan Harty and Michael N. Sohn,
Davis Polk; Greg Neppl and Alan Rutenberg, Foley Lardner.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Emerson Electric Co. ("Emerson"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the equity interests of certain subsidiaries from Respondent Pentair plc ("Pentair"); that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows: