

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

particular educational attainments and the passage of competency examinations and restricting entry by those who have encountered disciplinary proceedings, appear to be directly targeted to address these concerns.(7)

The Commission and courts have struck down restrictions on competition from part-timers that multiple listing services (MLS) with market power have imposed. In *United States v. Realty Multi-List, Inc.*, the Fifth Circuit held unreasonable a requirement of an MLS with market power that its members maintain an office open "during customary hours of business." (8) It stated that "[i]t may well be justified for [the MLS] to require that a prospective member be actively engaged in the business of a real estate broker in order that he contribute to [the MLS's] functioning. But a rule requiring that a broker be actively engaged in the business of brokering is a far cry from one requiring that he maintain an office open during customary hours of business," which the court noted effectively barred part-timers.(9) The court specifically noted that it could not be argued persuasively that the "customary hours" requirement was justified "by reference to [the] need to insure the competence and responsibility of [MLS] members." (10) The court also suggested that those doing business in the evenings and on weekends might well better serve the needs of customers.(11)

The FTC has challenged an MLS requirement that its members be "primarily" engaged in industrial real estate. The FTC's complaint alleged that this rule "excluded brokers who were actively engaged in industrial real estate brokerage" but who also were engaged in other activities.(12) The FTC's order bars the MLS from conditioning membership or use of the MLS on an applicant "being primarily engaged in industrial real estate brokerage." (13) Proposed Section 135-20-10, which essentially mandates full-time work on real estate, is thus significantly more restrictive than the restraint the FTC challenged. The FTC also has challenged an MLS requirement that MLS

(consent order); Bellingham-Whatcom County Multiple Listing Bureau, 113 F.T.C. 724 (1990) (consent order); Puget Sound Multiple Listing Association, 113 F.T.C. 733 (1990) (consent order); Florence Multiple Listing Service, Inc., 110 F.T.C. 493 (1988) (consent order); Multiple Listing Service Mid County, Inc., 110 F.T.C. 482 (1988) (consent order);