

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of MiRealSource, Inc., File No. 0610266

The Federal Trade Commission has accepted for public comment an agreement containing consent order with MiRealSource, Inc. (“MiRealSource” or “Respondent”). Respondent is a corporation owned by real estate brokers in Southeastern Michigan that operates a multiple listing service (“MLS”) designed to facilitate real estate transactions. The agreement settles charges that Respondent violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, through particular acts and practices of the MLS. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed consent order. This analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

I. The Respondent

MiRealSource is a Michigan corporation. Its shareholders are real estate brokers doing business in Southeastern Michigan, and they are generally referred to as “members” of the Respondent. MiRealSource has approximately 7,000 members, and these members supply real estate brokerage services to home sellers in Southeastern Michigan and to prospective purchasers seeking homes in that area. One of the primary tools utilized by members to carry out their business efficiently is the MiRealSource MLS. This service facilitates the process of matching sellers and buyers for a large number of individual properties. It functions as a clearinghouse through which members regularly and systematically exchange information on property listings.

II. Industry Background

A Multiple Listing Service, or “MLS,” is a cooperative venture by which real estate brokers serving a common local market area submit their listings to a central service, which in turn distributes the information, for the purpose of fostering cooperation among brokers in real estate transactions. The MLS facilitates transactions by putting together a home seller, who contracts with a broker who is a member of the MLS, with prospective buyers, who may be working with other brokers who are also members of the MLS. Typically, the MLS rules establish criteria for membership, including the requirement that brokers and agents must be licensed by the applicable state regulatory agency to engage in real estate brokerage services.

Prior to the late 1990s, the listings on an MLS generally were directly accessible only to real estate brokers who were members of a local MLS. At that time, the MLS listings typically were made available through books or dedicated computer terminals, and generally could only be accessed by the public by physically visiting a broker's office or by receiving a fax or hand delivery of selected listings from a broker.

Information from an MLS is now typically available to the general public not only through the offices of real estate brokers who are MLS members, but also through three principal categories of internet web sites. First, information concerning many MLS listings is available through Realtor.com, a national web site run by

¹ *E.g.*, PAUL C. BISHOP, HARIKA BICKICIOGLU, AND SHONDA D. HIGHTOWER, THE 2006 NATIONAL ASSOCIATION OF REALTORS PROFILE OF HOME BUYERS AND SELLERS (hereinafter, "NAR Study") at 3-3, 3-4, 3-6.

² *Id.* at 3-5.

³ NAR Study at 3-19.

compensation, which is determined by written agreement negotiated between the seller and the listing broker. In a common traditional listing agreement, the listing broker receives compensation in the form of a commission, which is typically a percentage of the sales price of the property, payable if and when the property is sold. In such a traditional listing agreement, the listing broker agrees to provide a package of real e

the flat fee package, but allows sellers to purchase additional services if sellers so desire. These non-traditional arrangements often are structured using Exclusive Agency Listing contracts.

There is a third type of real estate transaction that does not involve a real estate broker or the services of the MLS, and it is known as a "For Sale By Owner"

policies adopted by Respondent were joint action by a group of competitors to withhold distribution of listing information from rivals who did not contract with their brokerage service customers in a way that the group wished. This type of conduct was condemned by the Commission 20 years ago. I

order through its usual business communications and its web site. The proposed order requires notification to the Commission of changes in the respondent's structure, and periodic filings of written reports concerning compliance. The relief in the proposed consent order ensures that the Respondent cannot revert to the old rules or policies, or engage in future variations of the challenged conduct.

The proposed order applies to MiRealSource and entities it owns or controls, including its respective MLS and any affiliated web site it operates. The order does not prohibit members, or other independent persons or entities that receive listing information from Respondent, from making independent decisions concerning the use or display of such listing information on member or third-party web sites, consistent with any contractual obligations to Respondent.

The proposed order will expire in 10 years.