

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

In the Matter of Multiple Listing Service, Inc., File No. 061 0090

The Federal Trade Commission has accepted for public comment an agreement containing consent order with Multiple Listing Service, Inc. (“MLS, Inc.” or “Respondent”). Respondent operates a multiple listing service (“MLS”) that is designed to facilitate real estate transactions by sharing and publicizing information on properties for sale by customers of real estate brokers. The agreement settles charges that MLS, Inc. 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 thirty (30) days to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty (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 its terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by proposed Respondent that it violated the law or that the facts alleged in the complaint against the Respondent (other than jurisdictional facts) are true.

I. Background

MLS, Inc. is a Wisconsin corporation that provides multiple listing services to each of the local associations of real estate professionals based in the Milwaukee metropolitan area and surrounding counties. It is owned by several realtor boards and associations, and has more than 6500 members. Respondent serves the great majority of the residential real estate brokers in its service area, and is the sole MLS serving that area. MLS, Inc. also owns and operates a web site, wihomes.com, that provides listing information directly to consumers over the internet.

II. The Commission’s Previous Consent Orders

In general, the conduct at issue in this matter is largely the same as the conduct addressed by the Commission in six other consent orders involving MLS restrictions in the past year.¹ A general discussion of industry background and the Commission’s reasoning is contained in the Analysis to Aid Public Comment issued in connection with five of those consent orders in the

¹ *Information and Real Estate Services, LLC*, FTC File No. 061 0087; *Northern New England Real Estate Network, Inc.*, FTC File No. 051 0065; *Williamsburg Area Ass’n of Realtors, Inc.*, FTC File No. 061 0268; *Realtors Ass’n of Northeast Wisconsin, Inc.*, FTC File No. 061 0267; *Monmouth County Ass’n of Realtors, Inc.*, FTC File No. 051 0217; *Austin Bd. of Realtors*, FTC File No. 051 0219. See generally <http://www.ftc.gov/opa/2006/10/realestatesweep.shtm>.

“real estate sweep” announced in October 2006.²

A. THE REALTOR BOARD

MLS, Inc. serves residential real estate brokers in the Milwaukee metropolitan area and surrounding counties in Wisconsin. These professionals compete with one another to provide residential real estate brokerage services to consumers. Membership in MLS, Inc. is necessary for a broker to provide effective residential real estate brokerage services to sellers and buyers of real property in this area.³ By virtue of broad industry participation and control over a key input, MLS, Inc. has market power in the provision of residential real estate brokerage services to sellers and buyers of real property in southeast Wisconsin.

B. REALTOR CODE

The complaint accompanying the proposed consent order alleges that Respondent has violated the FTC Act by adopting rules and policies that limit the publication and marketing of certain sellers’ properties, but not others, based solely on the terms of their respective listing contracts. Listing contracts are the agreements by which property sellers obtain services from their chosen real estate brokers. The restrictions challenged in the complaint accompanying the proposed order state that information about properties will not be made available on popular real estate web sites unless the listing contracts follow the traditional format approved by the MLS. When implemented, these restrictions prevent properties with non-traditional listing contracts from being displayed on a broad range of public web sites, including the “Realtor.com” web site

² See <http://www.ftc.gov/os/caselist/0610268/0610268consentanalysis.pdf>.

³ As noted, the MLS provides valuable services for a broker assisting a seller as a listing broker, by offering a means of publicizing the property to other brokers and the public. For a broker assisting a buyer, it also offers unique and valuable services, including detailed information that is not shown on public web sites, which can help with house showings and otherwise facilitate home selections.

without using a selling broker, but this is true for traditional Exclusive Right to Sell Listings as well.

IV. Terms, Provisions, Conditions, and Order

Despite the recent decision by Respondent's Board of Directors to remove the challenged restrictions, it is appropriate for the Commission to require the prospective relief in the proposed consent order. Such relief ensures that MLS, Inc. cannot revert to the old rules or policies, or engage in future variations of the challenged conduct. The conduct at issue in the current case is itself a variation of practices that have been the subject of past Commission orders; in the 1980s and 1990s, the Commission condemned the practices of several local MLS boards that had banned Exclusive Agency Listings entirely, and several consent orders were imposed.⁴

The proposed order is designed to ensure that Respondent does not misuse its market power, while preserving the procompetitive incentives of members to contribute to the joint venture operated by MLS, Inc. The proposed order prohibits Respondent from adopting or

⁴ See, e.g., *In the Matter of Port Washington Real Estate Bd., Inc.*, 120 F.T.C. 882 (1995); *In the Matter of United Real Estate Brokers of Rockland, Ltd.*, 116 F.T.C. 972 (1993); *In the Matter of Am. Indus. Real Estate Assoc.*, Docket No. C 3449, 1993 WL 11303 (30)09648 (F.T.C. Jul. 6, 1993); *In the Matter of Puget Sound Multiple Listing Serv.*, Docket No. C 3390 (F.T.C. Aug. 2, 1990); *In the Matter of Bellingham Whatcom County Multiple Listing Bureau*, Docket No. C 3299 (F.T.C. Aug. 2, 1990); *In the Matter of Metro MLS, Inc.*, Docket No. C 3286, 1990 WL 10012611 (F.T.C. Apr. 18, 1990); *In the Matter of Multiple Listing Serv. of the Greater Michigan City Area, Inc.*, 106 F.T.C. 95 (1985); *In the Matter of Orange County Bd. of Realtors, Inc.*, 106 F.T.C. 88 (1985).