

Commissioner Jon Leibowitz
Remarks before the FTC/DOJ Workshop on Competition Policy in the Real Estate Industry
“Following the Yellow Brick Road to a More Competitive Landscape”
October 25, 2005
1:30 p.m.

Good afternoon. I’m Jon Leibowitz, a member of the Federal Trade Commission. I’d like to begin with the usual disclaimer that the views expressed here today are my own and do not reflect the views of the Commission or any other Commissioner.

T.S. Eliot once wrote that “Home is where one starts from.”¹ No doubt realizing the complexities involved in home buying in the U.S. – and wanting to spend his time penning poetry rather than divining disclosure forms -- he immediately moved to England. Where things are simpler.

As Eliot would no doubt agree, owning a home makes people feel connected to and invested in their communities at a very fundamental level, and the purchase or sale of a home is one of the most important decisions a family can make.

¹ T.S. Eliot, *The Four Quartets*, Quartet No. 2: *East Coker*, V (1940). (The Somerset Village of East Coker was one of the four “Quartets” in one of Eliot’s most famous poems.)

The NAR and its allies argue that their ultimate concern in these instances is for the consumer: specifically, eliminating potential confusion among agents, sellers, and buyers regarding whether a seller is represented by an agent (which would of course impact the availability of a commission), and protecting the unwary consumer from being compromised by a level of service that falls below expectations. The Realtors cite to failed transactions, and recall having to “clean up messes” left by limited service brokers.

No doubt, in certain circumstances, this may be true.

Critics of the traditional full-service brokerage model, especially those seeking to offer fee-for-service options, argue that a-la-carte pricing can potentially save individual consumers thousands of dollars per transaction. Online lending services such as Lending Tree assert that they in fact bring in more business for brokers - who do, by the way, participate willingly – through their advertising, while at the same time offering customer-friendly discounts generated by technological efficiencies and economies of scale. Discount brokers argue that efforts to block their access to the MLS on the same terms as full-service Realtors is unfair and geared solely toward protecting the traditional full-service, high commission model.⁷ The Progressive

property on his own will not be fed to publicly available web sites. James Hagerty, *Discount Real-Estate Brokers Spark a War Over Commissions*, Wall St. J, October 12, 2005, page A1.

⁷ Some newer entrants describe themselves as “full-service, reduced fee” brokers - providing the complete range of traditional services but for a lesser fee – while the model for other limited service brokers is based on the notion that consumers, aided by clear disclosure of the terms of representation, are capable of making an informed choice regarding which services

Policy Institute has estimated that these newer, Internet-based business models could save consumers close to half of that \$60 billion dollars currently spent on real estate commissions.⁸

anticompetitive effects absent repealing the law.

Having said that, I am very interested to see what empirical evidence reveals about the economic impact these laws may have on consumers – perhaps some of that evidence will be unveiled today. Reported price increases to date from one recently-enacted state law, though anecdotal, have not been tremendous from a monetary standpoint - for instance, a discount broker in Texas reported to the New York Times that his fees have increased from \$600 to only \$700 dollars per home.¹⁰

To be sure, the type of debate that is pervading the real estate industry, whe

Expedia, Travelocity, and Orbitz are among the top ten competitors in sales, traditional travel agencies like American Express Travel still claim the top spots.¹¹ Indeed, the vast majority of travel agents have opted to stay in the business and raise the level of their game to meet Internet competition.¹²

So where does this leave us? For now, squarely in the crossroads between investment in and comfort with the traditional real estate model and the promise of new, innovative alternatives. More competition is, of course, better than less. My own sense is that there is a way to create more competition and preserve a full range of service options for the consumer clearly and without confusion. Like my staffer Tin Man, there will always be consumers who prefer a full-service broker and are willing to pay the price supported by the market. These consumers certainly should be free to do so. Conversely, consumers who prefer to choose among a dis-aggregated selection of services - and receive adjusted pricing (closer to my staffer Lion) - should likewise have that option.

I am empathetic to concerns regarding free-riding, and certainly to protecting consumers from confusion – that is, after all, at the heart of the second hat the FTC wears. But I have yet to

¹¹ In 2005, American Express Travel made \$16 billion in sales, Carlson Wagonlit earned \$12 billion, and Expedia made \$12.5 billion. Kimberly Pierceall, *Industry Refines Services as Competition from Web Grows*,” The Press-Enterprise, August 28, 2005.

¹² Approximately 13% of travel agents have opted to leave the industry as Internet-based competition has risen, the rest have stayed and met the challenge. *Id.*

see any real indication that either of these phenomena is likely or significant enough to compromise the efficient operation of any MLS database. Put differently, a relaxation of the Realtor “rules of engagement” – rather than a tightening of the MLS screw – might be in consumers’ best interest. And it might not result in the sky falling on top of the traditional full-service brokerage model, either.

However, we are all still learning about this rapidly-changing industry, and everyone here today is listening. Workshops like these are a good start toward understanding the marketplace and toward understanding each other. In that regard, we are most fortunate to have two distinguished panels here this afternoon, which include an array of knowledgeable and accomplished people ranging from federal enforcement officials to professors of economics to industry experts. I am particularly appreciative of the Realtor presence here today.

And no matter what our differences – some of which we hope to bridge this afternoon – I’m sure that we all agree with Dorothy’s statement to Aunt Em. That is, “there’s no place like home.”¹³

Thank you.

¹³ *The Wizard of Oz* (MGM 1939), screenplay by Noel Langley, music by E.Y. “Yip” Harburg, based on the novel “The Wonderful Wizard of Oz” by L. Frank Baum (1900).

