submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–22975 Filed 11–26–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–026]

Government in the Sunshine Act Meeting Notice

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: November 29, 2007 at 11 a.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings*: None.
2. Minutes.
3. Ratification List.
4. *Inv. No. 731–TA–909 (Review)(Low Enriched Uranium from France)*—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 13, 2007.)
5. *Outstanding action jackets*: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 21, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–23008 Filed 11–26–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Multiple Listing Service Of Hilton Head Island, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of South Carolina in *United States of America* v. *Multiple Listing Service of Hilton Head Island, Inc.*, Civil Action No, 07–3435. On October 17, 2007, the United States filed a Complaint alleging that the Multiple Listing Service of Hilton Head Island, Inc. violated section 1 of the Sherman Act, 15 U.S.C. 1, by adopting and enforcing rules that restrict access to the Multiple Listing Service database and limit members' business behavior. The proposed Final Judgment, filed at the same time as the Complaint, requires the group to change its membership rules so that low-priced and innovative real estate brokers can compete in the Hilton Head area.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*. and at the Office of the Clerk of the United States District Court for the District of South Carolina. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530, (202) 307–0468.

J. Robert Kramer II,

Director of Operations Antitrust Division.

United States District Court for the District of South Carolina Beaufort Division

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, Plaintiff, v. Multiple Listing Service of Hilton Head Island, Inc., 18 Bow Circle, Hilton Head Island, SC 29928, Defendant

Civil Action No.9 :07–CV–3435–SB
Filed: 10/16/07
Complaint for Equitable Relief for Violation of 15 U.S.C. 1 Sherman Antitrust Act

Complaint

The United States of America, by its attorneys acting under the direction of the acting Attorney General, brings this civil antitrust action against Defendant Multiple Listing Service of Hilton Head Island, Inc. (''Hilton Head MLS'') to obtain equitable and other relief for violation of Section 1 of the Sherman Act, 15 U.S.C. 1, as amended.

Introduction

1. The United States brings this action to enjoin the Defendant from enforcing certain of its rules that unreasonably restrain competition among real estate brokers in the Hilton Head, South Carolina area Defendant is a multiple listing service, which is controlled by its members who are real estate brokers competing to sell brokerage services to consumers in the Hilton Head area.

2. Defendant provides a variety of services to its members, including the maintenance of a database of past and current listings of properties for sale in the Hilton Head area. Access to the database is critical to being a successful broker. Therefore, brokers seeking to provide brokerage services in the Hilton Head area need to be members of the Hilton Head MLS.

3. By its rules, Defendant denies membership to brokers who would likely compete aggressively on price or would introduce Internet-based brokerage into the market, and imposes unreasonable membership costs on publicly-owned brokerage companies.

Defendant's rules also stabilize prices by forcing member brokers to provide a certain set of brokerage services, whether or not the consumer desires to purchase those services.

4. Additionally, Defendant has authorized its Board of Trustees to adopt rules that would regulate commissions and impose discriminatory requirements on Internet-based brokers. The mere prospect that the Board might adopt such rules likely inhibits price and service competition. Their actual adoption would stabilize prices and competitively disadvantage Internet-based brokers.

5. By adopting and enforcing rules that restrict access to its database and limit members' business behavior, Defendant has restrained competition, reduced consumers' choices, and stabilized prices on Hilton Head Island.

Defendant And Its Members

6. Defendant Hilton Head MLS is organized as a not-for-profit corporation under the laws of South Carolina with its principal place of business on Hilton Head Island, Beaufort County, South Carolina.

7. Hilton Head MLS is a joint venture of over one hundred competing licensed brokers and other licensed real estate professionals doing business in the Hilton Head area. Hilton Head MLS serves Hilton Head Island, South Carolina. Although Hilton Head MLS also serves several surrounding counties as well as Hilton Head Island, close to 85 percent of the properties listed—as measured by dollar volume of closed transactions—in the Hilton Head MLS are located on Hilton Head Island, which no other MLS serves.

8. Whenever this complaint refers to any act, deed, or transaction of the Hilton Head MLS, it means the Hilton Head MLS is engaged in the act, deed, or transaction by or through its members, officers, directors, trustees, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

9. Various others, not named as Defendants, have participated as conspirators with Hilton Head MLS in the violations alleged in this complaint, and have performed acts and made statements to further the conspiracy.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Because Hilton Head MLS maintains its principal place of business on Hilton Head Island, South Carolina and transacts business and is found within this District, venue is proper in this District under 15 U.S.C. 22 and 28 U.S.C. 1391(b) .

Trade and Commerce

12. Broker-members of the Hilton Head MLS provided residential real estate brokerage services to in-state and out-of-state clients seeking to buy or sell property in the Hilton Head area. In 2005, those brokers facilitated the exchange of property worth over $2.5 billion, and they collected fees of approximately $170 million for their services. Interstate mortgage financing is affected by this exchange of property.

13. The Hilton Head MLS's activities and the violations alleged in this Complaint affect brokers, home buyers, and home sellers located throughout the United States. The Hilton Head MLS' s real estate activities are in the flow of, and have a substantial effect on, interstate commerce.

Concerted Action

14. The rules of the Hilton Head MLS are the product of agreements or concerted action among brokers who compete in the Hilton Head area. The broker-members of the Hilton Head MLS, as a group and through the Board they elect and the staff they indirectly employ, maintain and enforce MLS rules affecting a broker's participation in the MLS.

Relevant Markets

15. The provision of real estate brokerage services to sellers of residential real property and the provision of real estate brokerage services to buyers of residential real property are relevant service markets within the meaning of the antitrust laws. In the event of a small but significant increase in the price of brokerage services, the number of buyers and sellers that would switch to another way of selling or buying a home would not be sufficient to make such a price increase unprofitable.

16. The real estate brokerage business is local in nature. Most sellers prefer to work with a broker who is familiar with local market conditions. Likewise, most buyers seek to purchase property in a particular city, community, or neighborhood, and typically prefer to work with a broker who has knowledge of the area in which they have an interest. Both home buyers and home sellers desire a residential real estate broker who is a member of the MLS that serves the area in which they are purchasing or selling a home. Even though the Hilton Head MLS's service area encompasses neighboring counties as well as Hilton Head Island, nearly 85 percent of the properties listed—as measured by dollar volume of closed transactions—in the database are located on Hilton Head Island. In the event of a small but significant increase in the price of brokerage services relating to properties located on Hilton Head Island, the number of buyers and sellers who would switch to brokerage services relating to properties located elsewhere would not be sufficient to make such a price increase unprofitable. Therefore, for purposes of this complaint, Hilton Head Island constitutes the relevant geographic market, within the meaning of the antitrust laws.

Background Of The Offense

Industry Background and MLS Market Power

17. Most prospective home sellers and buyers engage the services of a broker to purchase and sell homes. Real estate brokers formed the Hilton Head MLS to facilitate the provision of real estate brokerage services to such buyers and sellers.

18. The Hilton Head MLS pools and disseminates information on almost every property available for sale on Hilton Head Island. It combines its members' property listings information into an electronic database and makes this data available to all brokers who are members of the MLS. By listing information on a home in the MLS, a broker can market it to a large number of potential buyers. A broker representing a buyer likewise can search the MLS to provide a home buyer with information about nearly all the listed properties in the area that match the buyer's housing needs.

19. Members of the Hilton Head MLS utilize the database as a clearinghouse to, among other things: communicate the listings information of the properties that they have for sale to other members; offer to compensate other members as cooperating brokers if they locate purchasers for those listings; locate properties for prospective purchasers; distribute listings to other members for advertisement purposes; and compile and distribute market statistics.

20. The Hilton Head MLS also maintains records of sold homes. These ''sold data'' records are very important for brokers working with sellers to set an optimum sales price. Brokers representing a buyer likewise use the sold data to help buyers determine what price to offer for a home.

21. Access to the database provided by the Hilton Head MLS is critical for

brokers who wish to serve buyers or sellers successfully on Hilton Head Island. By virtue of marketwide participation and control over a critically important input, the Hilton Head MLS has market power.

Growth of Alternative Business Models

22. The prices consumers paid to brokers for the brokerage services associated with a typical home sales transaction have increased substantially since 2003 on Hilton Head Island and in many other parts of the country. This is because brokers who adhere to traditional methods of doing business typically charge a fee calculated as a percentage of the sales price of the home, and that percentage has tended to be relatively inflexible as housing prices on Hilton Head Island and in many other parts of the country have increased dramatically. As a result of these higher prices, brokers offering competitively significant alternatives to traditional methods have emerged in other areas of the country.

23. *Technology-Savvy Brokers.* Some brokers in other parts of the United States use technology to automate certain tasks and to communicate more efficiently with consumers. For example, technology enables brokers to contact, communicate with, and service consumers remotely or in-person without the need for a retail office location that consumers can visit. Such technology-savvy brokers can reduce brokerage costs by operating fewer or no physical offices, and may pass cost savings on to consumers through reduced brokerage fees.

24. *Fee-for-Service Brokers.* Other brokers around the country now contract with buyers and sellers to provide a subset of services for a flat fee rather than for a percentage of the home sale price. Fee-for-service brokers provide certain enumerated services such as marketing the house or attending closings, while the buyer or seller takes responsibility for other services associated with brokerages such as making offers and counteroffers or conducting open houses on their own. Through fee-for-service packages, buyers and sellers can save money by purchasing only the services that they wish for their broker to provide.

25. *Price Discounters and Publicly-owned Brokerages.* Brokers in other areas of the country have attracted customers by offering full-service, reduced commission brokerage services. Additionally, brokers in other areas of the country have sought competitive advantage by creating nationwide firms. These firms raise capital through public ownership, invest in nationwide brands and provide brokerage services to consumers in multiple markets.

26. These types of brokerage models have not emerged on Hilton Head Island due to Defendant's rules. As a result, the prices that consumers pay for brokerage services are higher on Hilton Head Island than in other areas of the country.

Restraints on Competition

27. Defendant's rules and practices have harmed competition in a variety of ways. As a result of Defendant's rules, consumers of residential real estate brokerage services on Hilton Head Island have fewer choices among types of brokers and pay higher fees for those services than consumers in other areas of the country. Defendant's rules and practices are not reasonably necessary to achieve the procompetitive benefits of the MLS. Instead, the rules at issue here unreasonably: (1) Raise entry barriers for potential competitors by imposing burdensome prerequisites for membership; (2) provide a means of identifying potentially aggressive competitors so they can be excluded from membership; (3) stabilize the price of brokerage services through the prospect of price controls; (4) deter the emergence of Internet-based brokerages; (5) stabilize the price of, and reduce consumer options for, brokerage services by dictating the services that all brokers must provide; and (6) discourage entry of potential competitors who raise funds through public ownership.

28. Defendant's rules achieve these adverse effects by requiring that broker-members: (1) Maintain a physical office within the Hilton Head MLS service area; (2) reside within the area served by the Hilton Head MLS; (3) operate their offices during hours deemed reasonable by the Hilton Head MLS; and (4) hold a South Carolina real estate license as their primary license. (Bylaw Article II, Section II; Bylaw Article VII; & Rule II.) These rules allow Defendant to deny membership to brokers who operate business models that would increase competition. For example, these rules enable Defendant to exclude technology-savvy brokers who serve their clients without a physical office and who can pass along the cost savings to consumers through reduced commission rates. These rules also deprive consumers of the benefits of competition from brokers who work part-time or who are licensed under reciprocity provisions of South Carolina law.

29. Defendant's rules have enabled it to identify applicants who could be aggressive competitors and deny their application for membership. Broker-applicants are required to disclose their business history and prior employment, undergo a credit check, and obtain letters of recommendation from three current broker-members, *i.e.*, those with whom the applicant would compete. (Bylaw Article VII, Section IV; Bylaw Article VII, Section IV(a); Rule II.A.2.) These rules have allowed unreasonable denials of membership and thus deprived consumers of the benefits of competition.

30. Defendant has authorized its Board of Trustees to adopt mandatory guidelines that would regulate the commission that listing brokers offer to selling brokers in exchange for their cooperation on the home sale. (Bylaw Article XI, Section I.) The mere prospect that the Board might adopt such controls likely inhibits price competition. Their actual adoption would directly fix and stabilize prices.

31. Defendant has a rule that requires its members to provide certain services to all brokerage customers, whether or not desired by the customer. (Bylaw Article X; MLS Listing Agreement.) Embodied in the terms of Defendant's mandatory form listing agreement, this rule prevents current and prospective members from operating a fee-for-service business model. This rule decreases competition and harms consumers because it insulates Defendant's members from the competitive pressures posed by brokers who would offer additional pricing and service choices to their customers.

32. Defendant has authorized its Board of Trustees to impose discriminatory requirements on Internet-based real estate brokers. (Bylaw Article II, Section II.) The mere prospect that the Board might adopt such controls likely deters Hilton Head brokers from developing that business mode! and thereby inhibits such service competition. Such requirements, if implemented, would competitively disadvantage Internet-based brokers and discourage them from joining the MLS and competing on Hilton Head Island, thereby limiting consumer choice.

33. Defendant has a ''change in ownership'' rule that requires publicly-held brokerages to make a significant payment to the Defendant every time a share of their stock changes hands. (Bylaw Article VII, Section X; Rules II.A.3; II.B & II.E.) This rule competitively disadvantages publicly-owned companies and discourages them from joining the MLS and competing on Hilton Head Island, thereby limiting consumer choice.

34. Taken together, Defendant's rules discourage competition on price and service, and inhibit competitive actions

that would alter the status quo. As a result of Defendant's anticompetitive rules, consumers of brokerage services on Hilton Head Island have fewer choices of service options and pay higher prices for real estate brokerage services than do consumers in other parts of the country.

Violations Alleged

35. Defendant's above-referenced rules and practices constitute a contract, combination, or conspiracy by competitors with market power that unreasonably restrains competition on Hilton Head Island in violation of section I of the Sherman Act, 15 U.S.C. 1. Defendant's rules and practices are not reasonably necessary to carry out the procompetitive purposes of a multiple listing service.

36. The aforesaid contract, combination, or conspiracy has had and will continue to have unreasonable anticompetitive effects in the relevant market, including:

a. stabilizing and raising prices for real estate brokerage services;

b. reducing competition on price and quality for real estate brokerage services;

c. impeding innovation in the provision of real estate brokerage services;

d. preventing consumers from choosing fee-for-service brokerage models; and

e. creating barriers to entry into the provision of real estate brokerage services.

Request for Relief

Wherefore, the United States prays that final judgment be entered against Defendant declaring, ordering, and adjudging:

a. That the aforesaid contract, combination, or conspiracy unreasonably restrains trade and is illegal under Section 1 of the Sherman Act, 15 U.S.C. 1;

b. That the Defendant, its officers, directors, agents, employees, successors, and assigns and all other persons acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing or attempting to engage in, carry out or renew the combination and conspiracy alleged herein, or any other combination or conspiracy having a similar purpose or effect in violation of section 1 of the Sherman Act, 15 U.S.C. 1; and

c. That the Court grant such other relief as the United States may request and the Court deems just and proper.

Dated: October 16, 2007.

For Plaintiff United States of America.

Thomas O. Barnett,

Assistant Attorney General.

David L. Meyer,

Deputy Assistant Attorney General.

J. Robert Kramer II,

Director of Operations.

John Read,

Chief, Litigation III Section.

Nina Hale,

Assistant Chief, Litigation III Section.

Lisa A. Scanlon, Owen M. Kendler, Christopher M. Ries,

Attorneys for the United States of America, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, DC 20530, Telephone: (202) 616–5954, Facsimile: (202) 514–7308.

Respectfully submitted,

Reginald I. Lloyd,

United States Attorney.

By:

Barbara M. Bowens (I.D. 4004),

Assistant United States Attorney, 1441 Main Street, Suit 500, Columbia, South Carolina 29201.

United States District Court for the District of South Carolina;

United States of America, Plaintiff, v. Multiple Listing Service of Hilton Head Island, Inc., Defendant

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on October 16, 2007, and Plaintiff and Defendant, Multiple Listing Service of Hilton Head Island, Inc., by their respective attorneys, have consented to the entry of this Final Judgment (the ''Final Judgment'') without trial or adjudication of any issue of fact or law, and this Final Judgment shall not be evidence against or an admission by any party regarding any issue of fact or law;

And Whereas, Defendant is a multiple listing service among competing real estate brokerages, organized as a not-for-profit corporation under the laws of South Carolina, and maintains its principal place of business in Hilton Head Island, South Carolina;

And Whereas, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, Defendant agrees to take certain actions for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, Defendant has represented to the United States that the actions required below can and will be made and that Defendant will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A ''Defendant'' means the Multiple Listing Service of Hilton Head Island, Inc., its successors and assigns, and its members, officers, managers, committees, and employees.

B. ''Affiliate Member'' means any member of the Defendant that is engaged in banking, mortgage lending, mortgage brokering, and similarly related fields.

C. ''Associate Member'' means: (1) A member of the Defendant who is an 'associated licensee' as the term is defined in S.C. Code Ann. § 40–57–30 (2005) or any recodification thereof; and (2) a Licensee who associates with a Full Member or a Broker-in-Charge of a Full Member.

D. ''Applicant'' means a person who applies for full, associate, or affiliate membership in the Multiple Listing Service of Hilton Head Island.

E. ''Appraiser'' means any person who is licensed under Title 40 Chapter 60 of the South Carolina Revised Statutes or any future recode fication thereof and legally can perform real estate appraisal.

F. ''Appraisal Firm'' means a firm owned by or employing an Appraiser.

G. ''Broker-in-Charge'' means: (1) A ''broker-in-charge'' as the term is defined in S.C. Code Ann. § 40–57–30 (2005) or any recodification thereof; or (2) any licensed broker who is designated as having responsibility over the actions of all its associated licensees and is affiliated with a Full Member.

H. ''Buyer's Representation Agreement'' means the contract between a Licensee and Client or any other person who is a prospective home buyer.

I. ''Client'' means a person with whom a Licensee has established an agency relationship.

J. ''Compensation'' means: (1) Any commission or fee charged by, or rebate offered by, a Licensee to a Client or any person who is a prospective home buyer or seller; (2) any commission or payment offered to other Licensees in exchange for cooperation on a property transaction; or (3) any commission, salary, or fee exchanged between a Full Member and its affiliated or employed Licensees.

K. ''Full Member'' means any member of the MLS that is a real estate brokerage firm having a Broker-in-Charge or an Appraisal firm.

L. ''Licensee'' means: (1) Any person who is licensed under Title 40 Chapter 57 of the South Carolina Code Annotated or any future recodification thereof; (2) any person who legally can perform acts of real estate brokerage; or (3) any person who legally can perform acts of real estate brokerage while acting under the supervision of a licensed broker.

M. ''Listing Agreement'' means the contract between a Licensee and Client or any other person who is a prospective home seller.

N. ''Member MLS Database Access'' means the security measures, such as a login-id and password or key token, needed to access the complete MLS database provided by Defendant to Full, Associate or Affiliate Members. Member MLS Database Access does not mean or encompass any login-id or password that a Full or Associate Member establishes for, or grants to, its customers or clients either to access the broker's website or to access listings content provided on the broker's website.

O. ''Method of Service'' means the time, place, or manner in which a Licensee provides brokerage services to Clients or any other person who is a prospective home buyer or seller, subject to state and federal law (*e.g.*, office hours, the method by which the Licensee markets properties for sale, and the method by which the Licensee provides listings information to Clients or any other person who is a prospective home buyer or seller).

P. ''MLS'' means any multiple listing service owned or operated by Multiple Listing Service of Hilton Head Island, Inc.

Q. ''MLS Listing'' means any listing in which:

1. The Client or any other person who is a prospective home seller grants the Licensee the sole right to make an offer of compensation to cooperating brokers; and
2. The Licensee makes an offer of compensation to other cooperating Full or Associate Members.

R. ''MLS Service Area'' means the geographic area from which listings are placed in the MLS by Full or Associate Members.

S. ''Office Exclusive'' means a listing in which the owner refuses to grant permission for distribution of the listing to the MLS.

T. ''Real Estate Brokerage Firm'' means a firm owned by or employing a Broker-in-Charge.

U. ''Scope of Service'' means the set of specific brokerage services a Licensee has agreed it will provide to a Client or such other person who is a prospective home buyer or seller as well as the set of specific services that a Licensee will allow a Client or any other person who is prospective home buyer or seller to perform herself or himself (whether or not the licensee offers to provide such services). The Scope of Service may be set forth in a Listing Agreement, Buyers Representation Agreement, or other agreement between a Licensee and a Client or any other person who is a prospective home buyer or seller.

V. ''Trustees'' means the Trustees elected by the Full Members of Defendant.

III. Applicability

This Final Judgment applies to the Defendant and all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

A. Subject to the provisions of paragraph VI, Defendant is enjoined and restrained from adopting or enforcing any bylaw, rule, regulation, policy, or practice that has the purpose or effect of excluding:

1. from full membership any Real Estate Brokerage Firm that has a broker-in-charge holding an active real estate broker license issued by the appropriate State of South Carolina governmental licensing authority or any Appraisal Firm owned by or employing at least one person with an active appraiser license issued by the appropriate State of South Carolina governmental licensing authority; or
2. from associate membership any Licensee who holds an active real estate broker, agent, or salesman license issued by the appropriate State of South Carolina governmental licensing authority.

B. Subject to the provisions of paragraph VI, Defendant is enjoined and restrained from adopting or enforcing any bylaw, rule, regulation, policy, or practice that has the purpose or effect of:

1. failing to make available or furnish on like terms to any Full Member any and all services that Defendant now or hereafter makes available or furnishes to any of its Full Members;
2. failing to make available or furnish on like terms to any Associate Member any and all services that Defendant now or hereafter makes available or furnishes to any of its Associate Members;
3. failing to make available or furnish on like terms to any member who is an Appraiser any and all services that Defendant now or hereafter makes available or furnishes to any of its members who are Appraisers;
4. discriminating against, disfavoring, disciplining, or expelling any Full or Associate Member based on its office location, corporate structure, level or type of Compensation, Scope of Service, or Method of Service;
5. requiring any Full or Associate Member to perform brokerage services in excess of those required by South Carolina law;
6. prescribing the terms of Listing Agreements, Buyer's Representation Agreements, or any other agreement between a Full or Associate Member and any Client or any other person who is a prospective home buyer or seller;
7. refusing to accept or place in the MLS any MLS Listing submitted by a Full or Associate Member;
8. prescribing, recommending, setting standards, or guidelines concerning Compensation;
9. requiring an Applicant or a Full Member to inform Defendant of the ownership interests that others have in such Applicant or Full Member or charging a fee for a change in ownership;
10. requiring any Full or Associate Member, Appraiser or Trustee to reside or have an office in the MLS Service Area or any particular area or location; or
11. changing its three classes of membership (Full, Associate, and Affiliate) without the prior approval of the Department of Justice.

V. Required Conduct

A. Defendant is required to accept all Applicants into the Applicant's corresponding membership class (Full, Associate, or Affiliate) as follows:

1. any Real Estate Brokerage Firm that has a Broker-in-Charge who holds an active real estate broker license issued by the appropriate State of South Carolina governmental licensing authority shall be granted Full Membership;
2. any Licensee who holds an active real estate broker, agent, or salesman license issued by the appropriate State of South Carolina governmental licensing authority shall be granted Associate Membership; and
3. any Appraisal Firm with an owner or employee holding an active appraiser license issued by the appropriate State of South Carolina governmental licensing authority shall be granted Full Membership.

B. Defendant is ordered to delete from its Bylaws and Rules and suspend enforcement of:

1. The language in Bylaw Article II, Section II stating:

''Any realty or appraisal firm whose Broker in Charge or Head Appraiser applies for membership and which is owned as a subsidiary or affiliate of a realty firm which has its headquarters a state other than South Carolina must comply with the following additional regulations: * * * (2) it must have an office located within the Multiple Listing Service area (Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg counties); (3) the broker in charge or head appraiser of such realty or appraisal must be a resident of the Multiple

Listing Service area (Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg counties); and (4) all licensees of the realty firm or appraisal firm must hold their South Carolina license as their primary license.''

2. The language in Bylaw Article V, Section I stating:

''The Board of Trustees of MLS shall consist of persons who are residents of the counties served by MLS, including Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg, South Carolina,''

3. The language in Bylaw Article VII, Section II stating:

i. ''and shall consist of the brokers-in charge or Head appraiser of realty and appraisal firms who qualify for membership based upon the following criteria: (a) the firm has established and maintained a specific place of business in any of the following counties served by MLS: Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg, which office is available to the public during reasonable business hours;'' and

ii. ''Membership of internet only members are subject to restrictions set by the Board of Trustees.''

4. The language in Bylaw Article VII, Section ill stating:

''which: (a) Have established and maintained a specific place of business within the Multiple Listing Service Area (which includes Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg counties) that is available to the public during reasonable business hours;''

5. The language in Bylaw Article VII, Section IV stating:

i. ''to obtain or make credit checks or''; and

ii. ''and applications may require that the applicant supply various information and recommendations, including but not limited to:

(a) Three (3) separate character references from three (3) presently qualified Full Members; and

(b) In the case of Full Members, a history of business experience and employment information concerning all persons, including all partners and shareholders, who have any ownership interest in the applicant. Any such party acquiring an ownership interest of any kind after acceptance of the realty firm as a Full Member must submit all information required by this Section within ten (10) days after acquisition of the ownership interest and must be approved by the Board of Trustees.''

6. The Bylaw Article VII, Section X stating:

''In the event of any change of ownership of a member firm as determined by the Board of Trustees in accordance with the provisions of the Rules and Regulations, the Board of Trustees, at its option, may terminate the membership of such firm and require the firm to reapply for membership and pay the then current initiations fees in MLS as if said firm had never been a member of MLS.''

7. The language in Bylaw Article XI, Section I stating:

''The listing Full Member shall specify a commission split or other compensation which would be reasonably expected to encourage cooperation by other Full Members. It is to the advantage of the listing Full Member, and, consequently the owner, to establish compensation which will encourage other MLS Full Members to devote time and energy to the sale of the owner's listing with the expectation of reasonable compensation for the member's efforts. The Board of Trustees may adopt compensation guidelines that it deems sufficient to encourage such devotion of time and energy. Any Full Member which the Board of Trustees, in its sole discretion, believes is consistently establishing compensation which would discourage the intended cooperation by other Full Members may have its membership terminated by a majority vote of the Board of Trustees.''

8. The language in Rules and Regulations Section II, stating:

i. ''A.1.c. Establish and maintain a specific place of business in Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton, Orangeburg Counties, which is available to the public.'';

ii. ''A.2.c. Submit letters of recommendation from the Broker-In-Charge/Head Appraiser of three (3) firms who are members in good standing with the MLS of Hilton Head Island, Inc.'';

iii. ''A.2.g. Submit statement of Residence of Owners and Broker-In-Charge/Head Appraiser'';

iv. ''A.2.h. (2) address of the New Firm's office located within the Multiple Listing Service area (Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton, [and] Orangeburg Counties); (3) the address of the Broker-In-Charge/Head Appraiser to confirm that he/she is a resident of the Multiple Listing Service area; and (4) confirmation that all licensees of the New Firm hold their South Carolina licenses as their primary license and are residences of the aforementioned area''; and

v. ''B. Board of Trustees must be notified of any ownership changes within 10 days of said change and all changes of ownership fees paid. Notification must be in writing and signed by the BIC/Head Appraiser. A new Membership Agreement and Principals Audit must be fully executed and signed by the BIC/Head Appraiser and submitted to the MLS office along with notification. (Forms may be obtained on the MLS website *www.hiltonheadmls.com* and selecting Members Only.)''

9. The language in Rules and Regulations Section IT, Subsection E referring to principals.

10. The language in Rules and Regulations Section VI, Subsection 2 stating:

''Only MLS Exclusive Right to Sell Listing Agreements are accepted.''

C. Defendant is ordered to delete the term ''Exclusive Agency'' in Rules and Regulations Section VI, Subsection 7 and replace it with ''Office Exclusive.''

VI. PERMITTED CONDUCT

Notwithstanding the above, nothing shall prohibit Defendant from:

A. Requiring Applicants or Full, Associate, or Affiliate Members to pay:

1. A fee equal to the reasonable set-up costs of preparing to make Defendant's services available to the Applicant, Full, Associate, or Affiliate Member;

2. A reasonable security deposit, to secure against any unpaid claims or charges that may be asserted by Defendant against the Applicant, Full, Associate, or Affiliate Member; and

3. Fees for use of Defendant's services that are non-discriminatory and reflect the reasonable expenses of Defendant's operations.

B. Adopting or enforcing any bylaw, rule, regulation, policy practice, or agreement that is required for the MLS not to violate South Carolina law.

C. Publishing or making available illustrative Listing Agreements, Buyer's Representation Agreements, and any other written agreements, or contracts that Full or Associate Members may choose to use or modify, provided any such agreements leave blank the Compensation terms.

D. Adopting or enforcing any bylaw, rule, regulation, policy, practice, or agreement that prohibits Full, Associate, or Affiliate Members from enabling a third party to make use of its Member MLS Database Access.

E. Requiring a Full Member to notify the MLS of a change in or departure of its Broker-in-Charge, or the departure of any Associate Member.

F. Requiring a Full Member to provide the MLS with the name of a designated contact person to whom the MLS may direct correspondence and inquiries.

VII. COMPLIANCE AND INSPECTION

A. Within sixty (60) days after the date of entry of this Final Judgment, Defendant shall: (J) provide each of its members, trustees, and employees with notice of the amendments to its bylaws, rules, regulations and policies to conform to the provisions of this Order; (2) provide each of its members, trustees, and employees with a copy of this Order via its member-only Internet page; (3) inform all persons who are known to have inquired about membership in the last two years but who are not members of the amendments to its bylaws, rules, regulations and policies to conform to the provisions of this Order; (4) inform all persons under subsection (3) that they may apply or reapply for membership and that Defendant will grant membership if the applicant meets the requirements of the bylaws, rules, regulations and policies as revised by this Order; and (5) place on its home page of its publicly accessible web site (currently *http://www.hiltonheadmls.com*) a notice of the Final Judgment with a link to the Final Judgment.

B. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. access during Defendant's office hours to inspect and copy, or at Plaintiffs option, to require Defendant to provide copies of, all books, ledgers, accounts, records and documents in the Defendant's possession, custody, or control, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendant's trustees, officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

C. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, for the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, Defendant shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

D. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as required by law.

VIII. Retention Of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to extend the duration of the Final Judgment, to enforce compliance, and to punish violations of its provisions.

IX. Expiration Of Final Judgment

This Final Judgment will expire ten (10) years from the date of its entry.

X. Notice

For purposes of this Final Judgment, any notice or other communication shall be given to the person at the address set forth below (or such other addresses as the recipient may specify in writing): John R. Read, Chief, Litigation III Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge.

United States District Court for the District of South Carolina Beaufort Division;

United States of America, Plaintiff, v. Multiple Listing Service of Hilton Head Island, Inc, Defendant

Civil Action No. 9:07–CY–3435–SB
Filed: 10/16/2007

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On October __, 2007, the United States filed a civil antitrust complaint alleging that Defendant Multiple Listing Service of Hilton Head Island, Inc. (''Hilton Head MLS'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, by enforcing certain rules that unreasonably restrain competition among real estate brokers in the Hilton Head, South Carolina area. Defendant is a multiple listing service, which is controlled by its members who are real estate brokers competing to sell brokerage services to consumers in the Hilton Head area. As explained more fully below, brokers seeking to provide brokerage services in the Hilton Head area need to be members of the Hilton Head MLS.

In its Complaint, the United States alleges that the Defendant, by its rules, denies membership to brokers who would likely compete aggressively on price or would introduce Internet-based brokerage, and imposes unreasonable membership costs on publicly-owned brokerage companies. Defendant's rules also stabilize prices by forcing member brokers to provide a certain set of brokerage services, whether or not the consumer desires to purchase those services. The United States also alleges that the Defendant has authorized its Board of Trustees to adopt rules that would regulate commissions and impose discriminatory requirements on Internet-based brokers.

At the same time the Complaint was filed, the United States filed a Stipulation and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. The proposed Final Judgment, which is explained more fully below, requires the Defendant to rescind certain of its rules. The proposed Final Judgment also prohibits Defendant from adopting new rules that have the effect of excluding real estate brokers from membership based on such criteria as their business model, price structure, or office location. The proposed Final Judgment further prohibits Defendant from adopting new rules that would dictate the services and prices that its members must offer to their clients.

The Stipulation and proposed Order require Hilton Head MLS to take the actions required under the proposed Final Judgment. The United States and Hilton Head MLS have also stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Description of the Defendant and Its Activities

Hilton Head MLS is organized as a not-for-profit corporation under the laws of South Carolina with its principal place of business on Hilton Head Island, Beaufort County, South Carolina. Hilton Head MLS is a joint venture of over one hundred competing licensed brokers and other licensed real

estate professionals doing business in the Hilton Head area.[1]

Most prospective home sellers and buyers engage the services of a broker to purchase and sell homes. Real estate brokers formed the Hilton Head MLS to facilitate the provision of real estate brokerage services to such buyers and sellers. The Hilton Head MLS pools and disseminates information on almost every property available for sale on Hilton Head Island. It combines its members' property listings information into an electronic database and makes this data available to all brokers who are members of the MLS. By listing information on a home in the MLS, a broker can market it to a large number of potential buyers. A broker representing a buyer likewise can search the MLS to provide a home buyer with information about nearly all the listed properties in the area that match the buyer's housing needs.

Members of the Hilton Head MLS utilize the database as a clearinghouse to, among other things: communicate the listings information of the properties that they have for sale to other members; offer to compensate other members as cooperating brokers if they locate purchasers for those listings; locate properties for prospective purchasers; distribute listings to other members for advertisement purposes; and compile and distribute market statistics. The Hilton Head MLS also maintains records of sold homes. These ''sold data'' records are very important for brokers working with sellers to set an optimum sales price. Brokers representing a buyer likewise use the sold data to help buyers determine what price to offer for a home.

Access to the database provided by the Hilton Head MLS is critical for brokers who wish to serve buyers or sellers successfully on Hilton Head Island. By virtue of market-wide participation and control over a critically important input, the Hilton Head MLS has market power.

Industry Background

The prices consumers paid to brokers for the brokerage services associated with a typical home sales transaction have increased substantially since 2003 on Hilton Head Island and in many other parts of the country. This is because brokers who adhere to traditional methods of doing business typically charge a fee calculated as a percentage of the sales price of the home, and that percentage has tended to be relatively inflexible as housing prices on Hilton Head Island and in many other parts of the country have increased dramatically. As a result of these higher prices, brokers offering competitively significant alternatives to traditional methods have emerged in other areas of the country.

Some brokers in other parts of the United States use technology to automate certain tasks and to communicate more efficiently with consumers. For example, technology enables brokers to contact, communicate with, and service consumers remotely or in-person without the need for a retail office location that consumers can visit. Such technology-savvy brokers can reduce brokerage costs by operating fewer or no physical offices, and may pass cost savings on to consumers through reduced brokerage fees.

Other brokers around the country now contract with buyers and sellers to provide a subset of services for a flat fee rather than for a percentage of the home sale price. Fee-for-service brokers provide certain enumerated services such as marketing the house or attending closings, while the buyer or seller takes responsibility for other services associated with brokerages such as making offers and counteroffers or conducting open houses on their own. Through fee-for-service packages, buyers and sellers can save money by purchasing only the services that they wish their broker to provide. Brokers in other areas of the country have attracted customers by offering full-service, reduced commission brokerage. Additionally, still other brokers in other areas of the country have sought a competitive advantage by creating nationwide firms. These firms raise capital through public ownership, invest in nationwide brands, and provide brokerage services to consumers in multiple markets.

C. Description of the Alleged Violation

Defendant Hilton Head MLS, through the collective voting of its broker membership, has adopted and enforced rules and practices that exclude new entry and restrict member output. These rules are not reasonably necessary to carry out the procompetitive purposes of the multiple listing service. As such, these rules are agreements amongst competitors that restrain competition. Accordingly, in its Complaint, the United States alleges that Defendant's rules constitute a contract, combination, or conspiracy by competitors with market power that unreasonably restrains competition on Hilton Head Island in violation of Section I of the Sherman Act, 15 U.S.C. 1.

Specifically, the Complaint alleges that Defendant has rules and practices that require broker-members to: (1) Maintain a physical office within the Hilton Head MLS service area; (2) reside within the area served by the Hilton Head MLS; (3) operate their offices during hours deemed reasonable by the Hilton Head MLS; and (4) hold a South Carolina real estate license as their primary license. (Bylaw Article II, Section II; Bylaw Article VII; & Rule II.) These rules allow Defendant to deny membership to brokers who operate business models that would increase competition. These rules enable Defendant to exclude technology-savvy brokers who serve their clients without a physical office and who can pass along the cost savings to consumers through reduced commission rates. These rules also deprive consumers of the benefits of competition from brokers who work part-time or who are licensed under reciprocity provisions of South Carolina Law.

Defendant's rules have also enabled it to identity applicants for MLS membership who could be aggressive competitors and deny their application for membership. Broker-applicants are required to disclose their business history and prior employment, undergo a credit check, and obtain letters of recommendation from three current broker-members, *i.e.,* those with whom the applicant would compete. (Bylaw Article VII, Section IV; Bylaw Article VII, Section IV(a); Rule II.A.2.) These rules have allowed unreasonable denials of membership and thus deprived consumers of the benefits of competition.

Defendant has authorized its Board of Trustees to adopt mandatory guidelines that would regulate the commission that listing brokers offer to selling brokers in exchange for their cooperation on the home sale. (Bylaw Article XI, Section I.) The mere prospect that the Board might adopt such controls likely inhibits price competition. Their actual adoption would directly fix and stabilize prices. Defendant also has a rule that requires its members to provide certain services to all brokerage customers, whether or not desired by the customer. (Bylaw Article X; MLS Listing Agreement.) Embodied in the terms of Defendant's mandatory form listing agreement, this rule prevents current and prospective members from operating a fee-for-service business model. This rule decreases competition and harms consumers because it insulates Defendant's members from the competitive pressures posed by brokers

[1] The Hilton Head MLS requires that brokerage firms, rather than individual brokers, be members of the MLS. For the purposes of this document, any reference to brokers includes also the brokerage firms with which the broker is associated.

who would offer additional pricing and service choices to their customers.

Defendant has also authorized its Board of Trustees to impose discriminatory requirements on Internet-based real estate brokers. (Bylaw Article II, Section II.) Such requirements, if implemented, would competitively disadvantage Internet-based brokers and discourage them from joining the MLS and competing on Hilton Head Island, thereby limiting consumer choice. The mere prospect that the Board might adopt such controls likely deters Hilton Head brokers from developing an Internet-based model and thereby inhibits such service competition.

In addition, Defendant has a ''change in ownership'' rule that requires publicly-held brokerages to make a significant payment to the Defendant every time a share of their stock changes hands. (Bylaw Article VII, Section X; Rules II.A.3; IIB & IIE.). This rule competitively disadvantages publicly-owned companies and discourages them from joining the MLS and competing on Hilton Head Island, thereby limiting consumer choice.

D. Harm From the Alleged Violation

Taken together, Defendant's rules discourage competition on price and service, and inhibit competitive actions that would alter the status quo. Furthermore, there are no plausible justifications that these rules are reasonably necessary to carry out the procompetitive purposes of the multiple listing service. As a result of Defendant's anticompetitive rules, consumers of brokerage services on Hilton Head Island have fewer choices of service options and pay higher prices for real estate brokerage services than do consumers in other parts of the country.

Data analyzed from a MLS in another area of the country support these allegations. Data have shown an inverse correlation between the share of homes listed by fee-for-service brokers in the area and the level of cooperating commission offered to buyer's brokers for homes in that area. Thus, controlling for other influences, where fee-for-service brokers account for a greater portion of listings in an area, traditional brokers in that area offer lower cooperating commissions, on average, to brokers representing buyers.

III. Explanation of the Proposed Amended Final Judgment

The proposed Final Judgment will restore the competition that the agreement among the Hilton Head MLS members has eliminated and will prevent Hilton Head MLS from engaging in similar conduct in the future. The proposed Final Judgment will first require Hilton Head MLS to rescind all of the current MLS rules discussed above. Second, the proposed Final Judgment will enjoin Hilton Head MLS from adopting or enforcing any rules that will have a similar purpose or effect. More specifically, the proposed Final Judgment will prevent the Defendant from adopting rules or engaging in practices that (i) exclude active, licensed real estate professionals from their respective membership class in the MLS; (ii) fail to furnish under like terms to any member any services it furnishes to other members in its membership class; (iii) discriminate against any member based on its office location, corporate structure, level or type of compensation, scope of service, or method of service; (iv) require members to perform brokerage services in excess of those required by state law; (v) prescribe the terms of agreements between a member and its clients or any other person who is a prospective home buyer or seller; (vi) refuse to accept and place in the Multiple Listing Service any member's MLS listing; (vii) set standards or guidelines concerning compensation; (viii) charge members a fee for any change in ownership; (ix) require a member to maintain an office or reside in the MLS Service Area or any other particular location; or (x) alter any of its three classes of membership without the prior approval of the Department of Justice. The proposed Final Judgment will also require Hilton Head MLS to provide each of its members, trustees, employees, and agents with a copy of the proposed Final Judgment; inform all persons who inquired about membership in the last two years but who are not members of the MLS of the changes in the MLS rules caused by the proposed Final Judgment; and place on the home page of its publicly accessible website a notice of the proposed Final Judgment with a link to the proposed Final Judgment and the amended rules.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Amended Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. Given the inherent delays of a full trial and the appeals process, the United States is satisfied that the relief contained in the proposed Final Judgment will quickly establish, preserve, and ensure competition for real estate brokerage services in the Hilton Head MLS Service Area.

VII. Standard of Review Under the APPA for Proposed Amended Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(l). In making that determination, the Court, in accordance with amendments to the APPA in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(l)(A) & (B); *see generally United States* v. *SBC Commc'ns, Inc.*, Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9–16 (D.D.C. Mar. 29, 2007) (assessing public interest standard under APPA and effect of 2004 amendments).[2] As courts have held—both before and after the 2004 amendments—the United States is entitled to deference in crafting its antitrust settlements, especially with respect to the scope of its complaint and the adequacy of its remedy, which are the ''two most significant legal questions'' relating to a public interest determination. *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995); *SBC Commc'ns*, 2007 WL 1020746, at *12–*16.3.[3]

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In making its public interest determination, a district court must accord due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *SBC Commc'ns*, 2007 WL 1020746, at *16 (United States entitled to ''deference'' as to ''predictions about the efficacy of its remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716); see also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.O. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms;'' *SBC Commc'ns*, 2007 WL 1020746, at *16.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 2007 WL 1020746, at *14.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SSC Commc'ns*, 2007 WL 1020746, at *9.[5]

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[2] *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). The 2004 amendments do not affect the substantial precedent in this and other circuits analyzing the scope and standard of review for APPA proceedings. *See SBC Commc'ns*, 2007 WL 1020746, at *9 (''[A] close reading of the law demonstrates that the 2004 amendments effected minimal changes. * * *'').

[3] The *Microsoft* court explained that a court making a public interest determination under the APPA should consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *Microsoft*, 56 F.3d at 1458–62.

[4] *Cf BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[5] *United States* v. *Mid-Am. Dairymen. Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''[T]he Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive

Continued

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Amended Final Judgment.

Dated: October 16, 2007.

Respectfully submitted,

Lisa A. Scanlon,
Owen M. Kendler,
Christopher M. Ries,
Attorneys for the United States of America, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, Telephone: (202) 616–5954, Facsimile: (202) 514–7308.

Certificate of Service

I hereby certify that on October 16, 2007, I caused a copy of the foregoing Competitive Impact Statement to be served on counsel for Defendant in this matter in the manner set forth below:

Jane W. Trinkley,
McNair Law Firm, P.A. P.O. Box 11390, Columbia, SC 29211, (via e-mail and first-class mail).

Respectfully submitted,

Reginald I. Lloyd,
United States Attorney.

By:

Barbara M. Bowens (I.D. 4004),
Counsel for Defendant, Assistant United States Attorney, 1441 Main Street, Suite 500, Columbia, South Carolina 29201.

Christopher M. Ries,
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impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 20, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Katherine Astrich, OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Alien Employment Certification.

OMB Control Number: 1205–0015.

Form Number: ETA–750, Parts A and B.

Affected Public: Private Sector: Business or other for-profits; Farms; and Not-for-profit institutions.

Estimated Number of Respondents: 38,635.

Estimated Total Annual Burden Hours: 56,426.

Estimated Total Annual Costs Burden: $1,318,838.

Description: The information collection is required by section 212(a)(5)(A), section 214(c) and section 218 of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A), 1184(c) and 1188). The INA mandates the Secretary of Labor to certify that any alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may request any skilled or unskilled alien labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA or meet one of the exceptions in the INA. Both the Department of Labor and the Department of Homeland Security have promulgated regulations to implement these sections of the INA. The relevant regulations are 20 CFR 655.1–4, 20 CFR 655.90–113, 20 CFR 655.200–215, 8 CFR 204.5(k)(4)(ii), and 8 CFR 214.2(h)(5) and (6).

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to import foreign labor. The Form ETA–750 is the mechanism used to collect the necessary information which is utilized not only by the Department, but also by other Federal agencies to meet the requirements of the INA. The Department uses the information collected to implement several of its nonimmigrant worker programs, including the H–2A and H–2B temporary work programs, and for both permanent and temporary programs for the employment of alien professional athletes. The Department of Homeland Security, U.S. Citizenship and Immigration Services, utilizes the form for its National Interest Waiver program for employment-sponsored immigration.

Agency: Employment and Training Administration.

Type of Review: Revision and extension of a currently approved collection.

Title: Employment and Training Data Validation Requirement.

OMB Number: 1205–0448.

Form Numbers: ETA–DRVS Labor Exchange User's Guide Version 6.3; DRVS Workforce Investment Act Users Guide Version 6.3; NFJP Validation Form Version 2.0; and TAA Handbook Version 2.0.

Affected Public: State governments and not-for-profit institutions.

Estimated Number of Respondents: 318.