

until January 1, 2009, for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act. Section 316 does not require that the Commission publish reports on this monitoring activity or otherwise make the information available to the public. However, the Commission maintains current data files on tomatoes and peppers in order to conduct an expedited investigation should a request be received. In response to the monitoring requirement, the Commission instituted investigation No. 332-350, *Monitoring of U.S. Imports of Tomatoes* (59 FR 1763) and investigation No. 332-351, *Monitoring of U.S. Imports of Peppers* (59 FR 1762).

The Commission will make its reports available to the public in electronic form, and will maintain electronic copies of its reports on its Web site until one year after the monitoring requirement expires on January 1, 2009. The most recent Commission monitoring reports in this series were published in November 2004 and are available on the Commission's Web site.

**Written submissions.**—The Commission does not plan to hold a public hearing in connection with preparation of these reports. However, interested persons are invited to submit written statements containing data and other information concerning the matters to be addressed in the reports. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and should be received no later than the close of business on August 20, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, as least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, [ftp://ftp.usitc.gov/pub/reports/electronic\\_filing\\_handbook.pdf](ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf)).

Any submissions that contain confidential business information must

also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission will not publish such confidential business information in the monitoring reports it posts on its Web site in a manner that would reveal the operations of the firm supplying the information. However, the Commission may include such information in the report it sends to the President under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act, if it is required to conduct an investigation involving these products under either of these statutory authorities. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202-205-2000.

By order of the Commission.

Issued: August 1, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-15491 Filed 8-4-05; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States v. Kentucky Real Estate Commission; Proposed Amendment Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Amended Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Western District of Kentucky in *United States of America v. Kentucky Real Estate Commission*, Civil Action No. 3:05-cv-188-S.

On March 31, 2005, the United States filed a Complaint alleging that the Commission and others violated section 1 of the Sherman Act, 15 U.S.C. 1, when they entered into and engaged in a combination and conspiracy to restrict competition among real estate brokers

through the Commission's promulgation and enforcement of regulations banning rebates and inducements. The proposed Amended Final Judgment, filed on July 15, 2005: (i) Enjoins the Commission from enforcing any regulations that prohibit licensed real estate brokers in Kentucky from offering non-misleading rebates or inducements; (ii) requires the Commission to notify brokers that they can offer rebates and inducements to attract clients; (iii) permits any broker, whose license is currently suspended or revoked on account of offering a rebate or inducement, to request to have his or her license reinstated; (iv) requires the Commission to cease any current investigations or disciplinary actions relating to the offering of rebates and inducements; and (v) provides that any disciplinary action against rebates and inducements is null and void.

Copies of the Complaint, Stipulation and Order, proposed Amended Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Room 200, 325 Seventh Street, NW., Washington, DC 20530, 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 Western District of Kentucky in Louisville, Kentucky.

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 directed to John Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616-5935).

**Dorothy B. Fountain,**

*Deputy Director of Operations.*

#### **Competitive Impact Statement**

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), files this Competitive Impact Statement relating to the Proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

On March 31, 2005, the United States filed a civil antitrust Complaint pursuant to section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against Defendant, the Kentucky Real Estate Commission (the "Commission"). The Complaint alleges that the Commission and others entered into and engaged in a combination and conspiracy to restrict competition among real estate brokers through the Commission's promulgation and enforcement of regulations banning rebates and inducements (the "Rebate

Ban"). The Complaint further alleges that this combination and conspiracy is an unreasonable restraint of interstate trade that is illegal under section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks an order to terminate the Defendant's Rebate Ban, to enjoin future conduct in furtherance of any such Rebate Ban, and to obtain such other equitable relief necessary to restore competition for the benefit of consumers in Kentucky.

The United States filed on July 13, 2005, a Stipulation and Proposed Order, and on July 15, 2005, a Proposed Amended Final Judgment, which constitute the parties' settlement.

This proposed Amended Final Judgment, as explained more fully below, (i) enjoins the Commission from enforcing any regulations that prohibit licensed real estate brokers in Kentucky from offering non-misleading rebates or inducements; (ii) requires the Commission to notify brokers that they can offer rebates and inducements to attract clients; (iii) permits any broker, whose license is currently suspended or revoked on account of offering a rebate or inducement, to request to have his or her license reinstated; (iv) requires the Commission to cease any current investigations or disciplinary actions relating to the offering of rebates and inducements; and (v) provides that any disciplinary action against rebates and inducements are null and void.

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

## **I. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws**

### *A. Defendant*

In creating the Commission, the Commonwealth of Kentucky empowered it to regulate the licensing and education of brokers and to safeguard and protect the public interest. The Commission consists of five Commissioners, four of which, by statute, must be active real estate brokers before and during their term on the Commission. When there is a

broker-Commissioner vacancy, the Kentucky Association of Realtors, a private industry trade group for brokers, creates a list of not less than three nominees from which the Governor of Kentucky must appoint the new Commissioner. The Governor may reappoint a particular broker-Commissioner only if the trade association chooses to resubmit the broker-Commissioner's name on its new list of nominees.

The Commission is the sole licensing authority for real estate brokers in Kentucky. It is unlawful for any person to provide, or to offer to provide, real estate brokerage services in Kentucky unless he or she holds a current license issued by the Commission. The Commission also promulgates and enforces regulations, including the regulations that prohibit rebates and inducements to customers.

### *B. The Benefits of Rebates and Inducements*

The predominant form of payment for real estate brokerage services remains the "commission," a percentage of the price paid for the property. Brokers may compete by offering their services at different commission levels. To compete against one another, brokers in other States also frequently offer customers rebates and inducements. Examples of rebates and inducements include cash (whereby the buyer's broker offers some percentage or amount of his or her commission to the buyer), free products and services (such as televisions or home inspections), discounts or vouchers for other products and services (such as home moving services or home improvement stores), and donations to charities on the customer's behalf.

Rebates and inducements benefit home buyers and sellers. Under the traditional structure of a real estate contract, the seller and seller's broker determine the amount of the commission, and how it is allocated between the seller's and buyer's broker. If the seller's broker also finds the buyer, then that broker keeps the full commission. If, instead, different brokers represent the seller and buyer, the seller's broker pays the commission of the buyer's broker, and the size of that payment is not controlled by the buyer. Being able to offer rebates and inducements allows brokers to compete for the buyer's business by reducing the compensation they receive for representing a buyer. For example, the broker can offer prospective home buyers \$1,000 (payable from the broker's commission) at the time of closing, if

the buyers agree to have that broker as their agent.<sup>1</sup>

Rebates also benefit sellers. Rebates, for example, could be selectively offered to more price-sensitive home sellers. Thus, a broker could keep his or her commission fixed (for example at six percent), but discount to certain sellers through a rebate or inducement.

Buyers and sellers may also benefit from inducements, such as free or reduced-price non-real estate brokerage services, for which a broker may be able to contract at lower prices than would normally be available to buyers and sellers.

More generally, a more competitive and more efficiently-operating marketplace will tend to generate greater benefits for both home sellers and home buyers. All buyers and sellers benefit if the process of selling homes is less expensive. Consequently, allowing non-misleading rebates and inducements is procompetitive and represents an important component of price competition. Such price competition is permitted in most States. National discount brokers, for example, advertise rebates and inducements in the many States where they are permitted. Customers in these States then ask for rebates and inducements.

### *C. The Rebate Ban*

The Kentucky Legislature enacted statutes that authorize the Commission to regulate the licensing and education of brokers. Kentucky, however, expressly forbids the Commission from promulgating any regulation that fixes prices, establishes fees, or sets the rate at which brokers are compensated. *See* Ky. Rev. Stat. § 324.282. This statute confirms that Kentucky intended that consumers of real estate brokerage services enjoy the benefits of price competition among brokers. Despite this statute, in 1991, the Commission promulgated administrative regulations that banned rebates and inducements. *See* 201 Ky. Admin. Reg. 11:011, Section 1(5); 201 Ky. Admin. Reg. 11:121, Section 1(2). Specifically, the Commission's regulations forbid a broker "[t]o offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate, or any other thing of

<sup>1</sup> Although home sellers in Kentucky are permitted to offer inducements directly to the buyer, this does not mitigate the anticompetitive effects of the Commission's Rebate Ban. Such a discount is attached to a particular house (and not the broker's services). Thus, it is not a factor when a buyer chooses the broker who should represent the buyer in finding and purchasing a home. Brokers in Kentucky have been prohibited from competing to become the buyer's agent by lowering their prices through rebates and inducements.

value as an inducement.” 201 Ky. Admin. Reg. 11:121, Section 1(2).

The Commission warned brokers that they could not compete by offering rebates or inducements. Nor could brokers, prior to closing, even compete by taking clients out to dinner, donating money to a charity of the customer’s choice, or offering a free photo. The Commission announced that, even after the closing of a real estate transaction, brokers could not give their clients anything more than a gift worth up to \$100 in value.

To prevent brokers from offering rebates or other inducements, the Commission took several steps, including:

- Teaching brokers in licensing courses to refrain from offering rebates and inducements;
- Asking brokers to inform the Commission when one or more competing brokers offer rebates or other inducements;
- Bringing disciplinary actions against brokers for offering rebates or other inducements; and
- Sanctioning brokers for offering rebates or other inducements.

#### *D. The Agreement To Ban Rebates and Inducements Is an Unreasonable Restraint of Trade That Is Per Se Illegal*

As alleged in the Complaint, the Commission’s promulgation and enforcement of the Rebate Ban is the product of an agreement, combination, or conspiracy among Broker-Commissioners and others that has restricted the ability of brokers to compete on the basis of price. “In construing and applying the Sherman Act’s ban against contracts, conspiracies, and combinations in restraint of trade, the [Supreme Court] has held that certain agreements or practices are so ‘plainly anticompetitive’ and so often ‘lack \* \* \* any redeeming virtue,’ that they are conclusively presumed illegal without further examination under the rule of reason.” *Catalano v. Target Sales, Inc.*, 446 U.S. 643, 646 (1980) (conspiracy to eliminate short-term credit to retailers *per se* illegal) (citations omitted); *see also United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221 (1940) (any combination which tampers with price structures is unlawful); *TFWS, Inc. v. Schaefer*, 242 F.3d 198, 210 (4th Cir. 2001) (volume discount ban *per se* illegal). The agreement among the Broker-Commissioners and others to ban rebates and inducements through the promulgation and enforcement of the Rebate Ban is a *per se* violation of Section One of the Sherman Act. Given its pernicious effect on competition and

lack of any redeeming virtue, the agreement is conclusively presumed to be unreasonable without the need for an elaborate inquiry into the precise harm that is caused or the potential business justification for its use. *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 (1958).

## **II. Explanation of the Proposed Amended Final Judgment**

The effect of the Proposed Amended Final Judgment would be to restore competition that the agreement among the Broker-Commissioners and others had eliminated, and to prevent the broker-controlled Commission from engaging in similar conduct in the future. The Proposed Amended Final Judgment would enjoin the Commission from enforcing its Rebate Ban. The Commission must also take certain measures for those brokers, who were, or are being, disciplined for offering rebates and inducements. First, it must discontinue any investigations or disciplinary actions to the extent they relate to the offering of any rebates or inducements. Second, it must permit any broker, who currently is on probation or whose license is currently suspended or revoked for having offered a rebate or inducement, to have his or her license reinstated to the extent that the broker otherwise meets the contemporary licensing requirements under the Kentucky Revised Statutes. Third, the Commission must treat any past disciplinary actions for offering rebates or inducements as null and void.

## **III. 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 district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys’ fees. Entry of the Proposed Amended 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 Amended Final Judgment has no effect at *prima facie* evidence in any subsequent private lawsuit that may be brought against the Defendant.

## **IV. Procedures Available for Modification of the Proposed Amended Final Judgment**

The parties have stipulated that the Proposed Amended Final Judgment may be entered by this Court after compliance with the provisions of the

APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court’s determination that the Proposed Amended Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the Proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the Proposed Amended Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Proposed Amended Final Judgment at any time prior to entry. The comments are the response of the United States will be filed with this Court and be published in the **Federal Register** (unless upon application by the United States, the Court, for good cause, authorizes an alternative method of public dissemination). Written comments should be submitted to: John Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh St, NW., Suite 300, Washington, DC 20530.

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

## **V. Alternatives to the Proposed Amended Final Judgment**

The United States considered, as an alternative to the Proposed Amended 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 Amended Final Judgment, will quickly establish, preserve, and ensure competition for real estate brokerage services in Kentucky.

## **VI. 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 60-day comment period, after which the court shall determine whether entry of the Proposed Amended Final Judgment “is in the public interest.” 15

U.S.C. 16(e)(1). In making that determination, the court shall consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or 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)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to 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. *See United States v. Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

“Nothing 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). Thus, in conducting this inquiry, “[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.”<sup>2</sup> Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in

<sup>2</sup> 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). *See United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer “whether the settlement achieved [was] within the reaches of the public interest”). A “public interest” determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See H.F. Rep. No. 93–1463*, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

order to determine whether those explanations are reasonable under the circumstances.<sup>3</sup>

Accordingly, 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.”<sup>4</sup> 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.<sup>5</sup>

The Proposed Amended Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a 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’ ”<sup>6</sup>

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; the APPA does not authorize

<sup>3</sup> *United States v. Mid-America Dairymen, Inc.*, Civ. Action No. 73 cv 681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. May 17, 1977).

<sup>4</sup> *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also* *Microsoft*, 56 F.3d at 1458.

<sup>5</sup> *Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted); *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”); *Gillette*, 406 F. Supp. at 716 (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”). *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’ ”

<sup>6</sup> *United States v. Microsoft Corp.*, 231 F. Supp. 2d 144, 153 (D.D.C. 2002) (quoting *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983)); *see also* *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (standard is not whether decree is one that will best serve society, but whether it is within the reaches of the public interest).

the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Since 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 might have but did not pursue. *Id.* at 1459–60.

## VII. 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: July 26, 2005.

Respectfully submitted.

Andrew C. Finch,  
Counsel to the Assistant Attorney General.

Maurice E. Stucke,  
Owen M. Kendler,  
Mary Beth McGee and  
Mark A. Merva.

Attorneys for the United States; U.S.  
Department of Justice, Antitrust Division,  
Litigation III Section, 325 7th Street, NW.,  
Suite 300, Washington, DC 20530.  
Telephone: (202) 305–1489. Facsimile:  
(202) 514–7308. E-mail:  
Maurice.Stucke@usdoj.gov.

## Certificate of Service

I hereby certify that on July 26, 2005, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: John S. Reed, David J. Hale, Reed Weitkamp Schell & Vice PLLC; 500 West Jefferson Street, Suit 2400, Louisville, KY 40202–2812, Counsel for Defendant.

Owen M. Kendler,  
U.S. Department of Justice, Antitrust  
Division, Litigation III Section, 325 7th  
Street, NW., Suite 300, Washington, DC  
20530. (202) 305–8376 (telephone). (202)  
514–7308 (facsimile).  
Owen.Kendler@usdoj.gov.

## Amended Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on March 31, 2005, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment, as amended on July 15, 2005 (the “Amended final Judgment”), without trial or adjudication of any issue of fact or law, and this Amended Final Judgment shall not be evidence against or an admission by any party regarding any issue of fact or law;

And whereas, Defendant agrees to be bound by the provisions of this

Amended Final Judgment pending its approval by the Court.

*And whereas*, Plaintiff required Defendant 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 herein, the term:

A. "Defendant" means the Kentucky Real Estate Commission, its successors and assigns, and its commissioners, directors, officers, managers, committees, agents, and employees.

B. "Disciplinary Action" means:

1. The Defendant's revocation or suspension of, or refusal to grant, a license to provide Real Estate Brokerage Services in Kentucky;

2. The Defendant's imposition of a reprimand, fine, probation, or other penalty or condition; or

3. The initiation, by the Defendant or at its request, of an administrative, criminal, or civil proceeding.

C. "Enforcing" a Regulation means any manner—formal or informal—in which Defendant requires compliance with any Regulation, including, but not limited to, investigations or hearings of purported violations of the Regulation, and any Disciplinary Actions for any violation of the Regulation.

D. "Inducement" means money, a free gift, a prize, or any other thing of value that a Licensee would offer a potential client or customer.

E. "Licensee" means any person who is licensed by Defendant under chapter 324 of the Kentucky Revised Statutes or any future recodification thereof and legally can perform acts of real estate brokerage, and any person who legally can perform acts of real estate brokerage while acting under the supervision of a licensed broker.

F. "Licensee Price" means any commission, fee, or charge that the Licensee offers to charge, or does

charge, for its Real Estate Brokerage Services, and includes any discounts.

G. "Price Advertising" means advertising information about the Licensee Price or any discount, Rebate, or Inducement.

H. "Real Estate" means real property, and includes timeshares, options, leaseholds, and other interests less than leaseholds.

I. "Real Estate Brokerage Services" means any service that only a Licensee is authorized to provide pursuant to applicable Kentucky statutes and regulations.

J. "Rebate" means a payment of monies or anything of value by, or on behalf of, a Licensee to a client or customer (or to a third party authorized by the client or customer to receive the payment) that is in connection with the provision of Real Estate Brokerage Services. Examples of Rebates directed to third parties include, but are not limited to, payments to charities, home inspectors, and moving services. A Rebate does not include compensation paid for Real Estate Brokerage Services to any third party who is not licensed in Kentucky to perform such services; this Amended Final Judgment does not authorize a client or customer to permit or direct such payments to an unlicensed third party for performing such services.

K. "Rebate Ban" means any Regulation, including, but not limited to, the Defendant's Regulation at 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2), that might prevent Licensees from offering or using any Licensee Price, discounts, Rebates, or Inducements, or using any Price Advertising to notify consumers of any Licensee Price, discounts, Rebates, or Inducements.

L. "Regulation" means any Kentucky administrative regulation, and includes any formal or informal policy, restriction, rule or legal interpretation adopted or applied by Defendant.

### III. Applicability

This Amended Final Judgment applies to the Kentucky Real Estate Commission, as defined above, and all other persons in active concert or participation with it who receive actual notice of this Amended Final Judgment by personal service or otherwise.

### IV. Prohibited Conduct

Defendant is enjoined from, directly or indirectly, or through any Regulation, Disciplinary Action or other conduct:

A. Entering into, continuing, maintaining, or renewing any agreement, contract, or Regulation to fix,

establish, raise, stabilize, suppress, eliminate, regulate, or maintain the level of commissions, discounts, Rebates, Inducements, or the Licensee Price;

B. Prohibiting, restricting, impeding, or discouraging any Licensee from Price Advertising or from offering any Licensee Price, discounts, Rebates, or Inducements;

C. Investigating any Licensee for Price Advertising or for offering any Licensee Price, discounts, Rebates, or Inducements;

D. Threatening or taking any Disciplinary Action against any Licensee for Price Advertising or for offering any Licensee Price, discounts, Rebates, or Inducements;

E. Enforcing the Rebate Ban; or

F. Inducing, urging, encouraging, or assisting any person or organization to take any of the actions prohibited by this Section of the Amended Final Judgment.

### V. Other Actions

A. Until the Rebate Ban is repealed and eliminated, Defendant shall treat the Rebate Ban as preempted by the federal antitrust laws and null and void.

B. Defendant shall address the substance of this Amended Final Judgment—including that Licensees are free to compete by offering any Licensee Price, discounts, Rebates, or Inducements—in the training or educational materials that Defendant prepares, reviews, or approves for the following courses (including any course in the future, which may have a different name, but covers substantially the same topics): the Kentucky Core course, the Brokerage Management course, and a pre-licensing course.

C. All Disciplinary Actions—to the extent they related to the offering of any discounts, Rebates, or Inducements—shall be null and void. Any records in the Defendant's possession, custody, or control relating to a Licensee subject to such Disciplinary Action shall reflect the same.

### VI. Notifications

A. Within thirty (30) days from July 13, 2005, Defendant shall notify in writing:

1. Each Licensee who—as of July 13, 2005—is on probation or whose license is suspended or revoked for offering a discount, Rebate, or Inducement, that the license may be reinstated, at the Licensee's request, to the extent that the Licensee otherwise meets the contemporary licensing requirements under the Kentucky Revised Statutes.

2. Each Licensee, who—as of July 13, 2005—is being investigated or subject to a Disciplinary Action for offering a

discount, Rebate, or Inducement, that such investigation or action—to the extent it relates to the offering of discounts, Rebates, or Inducements—has ceased with no further Disciplinary Action taken. Any records in the Defendant's possession, custody, or control relating to the affected Licensee shall reflect the same.

B. Within one-hundred-and-twenty (120) days from July 13, 2005, Defendant shall display prominently on the first page of its newsletter the following language:

On July 13, 2005, under the terms of a settlement with the U.S. Department of Justice Antitrust Division, the Kentucky Real Estate Commission agreed to stop enforcing regulations that restricted the use and advertisement of rebates, inducements or discounts by KREC licensees. The proposed Amended Final Judgment effecting the settlement and a letter of explanation were mailed to each KREC licensee. Any licensee who did not receive this mailing may request another copy. Links to the proposed Amended Final Judgment and the explanatory letter can also be found on the "Real Estate Licensing Laws in Kentucky" and "Legal Information" pages of KREC's Web site, <http://www.krec.ky.gov/>.

C. Within thirty (30) days from July 13, 2005, Defendant shall mail or deliver a copy of the proposed Amended Final Judgment, under cover of the letter attached hereto as "Appendix A," to each Licensee.

D. For a period of three (3) years from July 13, 2005, Defendant shall mail or deliver a copy of the proposed Amended Final Judgment, under cover of the letter attached hereto as "Appendix A," to each new Licensee of Defendant within forty-five (45) days of each such person's acceptance by Defendant as a Licensee.

E. Within thirty (30) days from July 13, 2005, and for a period of sixty (60) days thereafter,

1. Defendant shall prominently publish the proposed Amended Final Judgment and the letter attached hereto as "Appendix A" on the home page of its Web site, <http://www.krec.ky.gov/>.

2. After such sixty (60) day period, and for a following period of three (3) years, Defendant shall maintain a link from its "Real Estate Licensing Laws in Kentucky" and "Legal Information" web pages, or their equivalent, to the Amended Final Judgment and the letter attached hereto as "Appendix A" in a manner that provides reasonable notice to interested parties.

F. Defendant shall notify Plaintiff at least thirty (30) days prior to any proposed change to its Regulations that may affect Defendant's compliance obligations arising out of the Amended Final Judgment.

G. As soon as Defendant is aware of any proposed change to any statute or executive order that may affect its compliance obligations arising out of the Amended Final Judgment, Defendant shall immediately notify Plaintiff.

#### VII. Limiting Conditions

A. With the exception of such actions that are prohibited elsewhere in this Amended Final Judgment, nothing shall alter the Defendant's general authority to adopt and enforce reasonable Regulations, or to take Disciplinary or other action designed to prevent violations of the Kentucky Revised Statutes. Such authority includes the right to prohibit:

1. Advertising that is fraudulent, false, deceptive, or misleading within the meaning of Kentucky Revised Statutes, Chapter 324, Section 160(4)(1);

2. Any promise, assertion, representation, or statement of fact that is false, deceptive, or misleading; or constitutes under Kentucky law an otherwise illegal lottery scheme, whereby there is the payment of valuable consideration for the chance to receive a prize; or

3. For the protection of the client or customer, failure by Licensees to disclose in writing to their clients or customers the terms of any offered Rebates or Inducements.

#### VIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Amended Final Judgment, or of determining whether the Amended 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 Plaintiff's 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 Amended Final Judgment; and

2. To interview, either informally or on the record, Defendant's commissioners, 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.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendant shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Amended Final Judgment as may be requested.

C. 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 Amended Final Judgment, or as otherwise required by law.

#### IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Amended 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 Amended Final Judgment, to modify any of its provisions, to extend the duration of the Amended Final Judgment, to enforce compliance, and to punish violations of its provisions.

#### X. Expiration of Final Judgment

This Amended Final Judgment will expire ten (10) years from the date of its entry, but only if the Rebate Ban has been repealed and eliminated.

#### XI. Notice

For purposes of this Amended 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):

*For the United States:* Chief, Litigation III Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

*For the Defendant:* Lee B. Harris, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, KY 40223; With a copy to: John S. Reed, David J. Hale, Reed Weitkamp Schell & Vice PLLC, 500 West Jefferson Street, Suite 2400, Louisville, KY 40202-2812.

#### XII. Public Interest Determination

Entry of this Amended 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.

#### Appendix A

(Letterhead of the Kentucky Real Estate Commission)

Dear Licensee: The Kentucky Real Estate Commission, under the terms of a settlement with the U.S. Department of Justice, has agreed to stop enforcing regulations that restricted the use and advertisement of rebates, inducements, or discounts by you or any other licensee. A copy of the proposed Amended Final Judgment is enclosed.

In order that you may readily understand the terms of the proposed Amended Final Judgment, we describe below its essential provisions, although you must realize that the proposed Amended Final Judgment itself is controlling, rather than the following explanation of its provisions:

(1) The Commission must allow you or any other licensee to offer customers rebates, discounts, or other inducements. The Commission must also allow you or any other licensee to use truthful and non-misleading advertisements to notify consumers of rebates, inducements, or other discounts, which you may choose to offer.

(2) The Commission will no longer enforce any ban against rebates, discounts, or other inducements. Specifically, the Commission will not enforce the regulation at 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2), that, in the absence of the proposed Amended Final Judgment, had prevented you from offering rebates, discounts, or other inducements.

(3) You and any other licensee are now free to compete by offering consumers rebates, discounts, and other inducements.

(4) If you were disciplined for offering a rebate, discount, or other inducement, then that disciplinary action shall be deemed null and void, and the Commission will note that in its records.

Please note that the proposed Amended Final Judgment does not alter the Commission's authority to enforce its regulations generally and to prohibit advertising or other conduct that is fraudulent, false, deceptive, or misleading. Moreover, licensees still cannot offer illegal lottery schemes. Also enclosed are the relevant portions of a new Kentucky Administrative Regulation filed July \_\_, 2005. This regulation requires licensees to disclose in writing to their clients and customers the terms of all rebates and inducements.

Sincerely yours,

[appropriate Commissioner or officer]  
(Enclosures.)

#### Complaint

The United States of America, by its attorneys acting under the direction of the Attorney General of the United States, brings this antitrust action against the Kentucky Real Estate Commission ("the Commission") for

violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Commission promulgated and enforces administrative regulations that ban real estate brokers and sales associates in Kentucky (collectively "Brokers") from competing with each other by offering consumers cash rebates or other inducements (the "Rebate Ban"). The Commission's promulgation, adoption, maintenance, and enforcement of these regulations is a result of agreements, combinations, or conspiracies among the Commissioners and others that unreasonably restrain competition. For example, the Rebate Ban prevents buyer Brokers from competing on price by offering cash rebates when they enter into agreements with clients.

#### Nature of the Action

1. By this action, the United States challenges regulations promulgated by the Commission that prohibit Brokers from competing with each other by offering rebates or inducements to consumers of real estate brokerage services.

2. The Commonwealth of Kentucky ("Kentucky") created the commission and empowered it to regulate the licensing and education of Brokers and to safeguard and protect the public interest.

3. In creating the Commission, the Kentucky legislature sought to preserve price competition in real estate brokerage services for the good of its citizens. Toward that end, Kentucky specifically prohibits the Commission, which consists almost entirely of practicing Brokers, from "promulgat[ing] any administrative regulation which in any way fixes prices, establishes fees, or sets the rate at which [Brokers] are compensated." Ky. Rev. Stat. § 324.282.

4. In conflict with Kentucky's policy and statutory prohibition, the commissioners, through their promulgation and enforcement of the Rebate Ban (*see* Ky. Admin. Reg. 11:011, Section 1(5); 201 Ky. Admin. Reg. 11:121, Section 1(2)), have enabled Brokers to raise, fix, peg, or stabilize the prices and rates at which Brokers are compensated. The Rebate Ban is the result of agreements, combinations, or conspiracies among its Commissioners and others, and it unreasonably restrains competition to the detriment of consumers.

5. The Rebate Ban deprives consumers of the benefits of price competition among Brokers in the provision of real estate brokerage services in Kentucky. The Rebate Ban makes it more difficult for consumers of

real estate brokerage services to obtain lower prices for these services.

6. Brokers have substantially resisted attempts to eliminate the Rebate Ban. In a Commission survey, many Brokers conceded that repealing or modifying the Rebate Ban would generate a bidding war and lead to lower prices for consumers:

a. "If we give rebates and inducements, it would get out of control and all clients would be wanting something. The present law keeps it under control."

b. "This would turn into a bidding war, lessen our profits and cheapen our 'so-called' profession."

c. "I am for the law as it stands now. If inducements were allowed, they could lead to competitive behavior, which would make us look unprofessional in the eyes of the public."

d. "I think this would just take money right out of our pocket."

e. "We work to hard to give it away." 7. A few Brokers, who supported eliminating the Rebate Ban, cited some of the procompetitive benefits that repeal would foster:

a. "Rebates and inducements will increase competition and give consumers more choices in service."

b. "Current law inhibits free trade. Most all other states allow inducement and rebates. Disclosure is all the police we need."

c. "Commissions and sales awards are common in other industries. The bigger wrong being committed by agents and broker is the informal unspoken price fixing that occurs."

d. "Buyer's brokers need to be able to offer a commission based on negotiation for buyer broker services. An agency contract should not be dependent on what the listing company offers. All commissions are negotiable. Also, let the public decide what offer they want to take on inducements."

8. The United States seeks to terminate this illegal restraint on competition and to obtain other equitable relief necessary to restore competition for the benefit of consumers of real estate brokerage services in Kentucky.

#### The Defendant

9. The Commission is organized, exists, and transacts its business under and by virtue of the laws of Kentucky, with its principal place of business in Louisville, Kentucky.

10. The Commission is the sole licensing authority for Brokers. It is unlawful for a person to provide, or to offer to provide, real estate brokerage services in Kentucky unless he or she

holds a current license issued by the Commission.

11. The Commission consists of five Commissioners. By stature, four of the Commissioners must be active Brokers ("the Broker-Commissioners") before and during their term on the Commission. The fifth Commissioner, a citizen-at-large, may not be associated with or financially interested in the brokerage industry.

12. When there is a Broker-Commissioner vacancy, the Kentucky Association of Realtors ("the Association"), a private industry trade group for Brokers, selects a list of not less than three nominees from which the Governor of Kentucky must appoint the new Commissioner. The Governor may reappoint a particular Broker-Commissioner only if the Association chooses to resubmit the Broker-Commissioner's name on its new list of nominees.

13. The Commission promulgates and enforces regulations, including the regulations at issue in this Complaint.

14. The Association actively participates in the Commission's rulemaking activities. Often, when the Commission has considered changing its regulations, it has formed a joint task force with the Association consisting of Commission and Association representatives. Such joint task forces have prepared draft regulatory text for the Commission's consideration.

15. Kentucky law authorizes the Commission to take disciplinary action against any Broker who violates Kentucky real estate statutes or any of the Commission's regulations.

16. Neither the legislative nor the executive branch of Kentucky, however, oversee the Commission's regulations or enforcement actions, including the Commission's enforcement actions regarding alleged violations of the Rebate Ban.

17. Although the Commission has inhibited competition by banning rebates, neither the Commission nor the executive or legislative branches of Kentucky oversee the competitiveness or reasonableness of the pricing by Brokers for their services. Moreover, the Commission does not maintain or collect information concerning the level of real estate brokerage commissions.

#### **Jurisdiction and Venue**

18. This complaint is filed under Section 4 of the Sherman Act, as amended 15 U.S.C. 4, in order to prevent and restrain the violation, as herein alleged, of Section 1 of the Sherman Act, 15 U.S.C. 1.

19. This Court has subject matter jurisdiction under Section 4 of the

Sherman Act, as amended 15 U.S.C. 4, and under 28 U.S.C. 1331, 1337(a), and 1345.

20. Venue is proper in this judicial district under 28 U.S.C. 1391(b) because the Commission was created by Kentucky statute, it transacts business throughout Kentucky, and it maintains its principal place of business in Louisville, Kentucky.

#### **Trade and Commerce**

21. The Commission's Rebate Ban and other activities substantially affect interstate commerce. Billions of dollars worth of real property is exchanged each year in Kentucky with the assistance of Brokers. Brokers assist in-state and out-of-state clients to buy, sell, lease, or manage real property. Interstate mortgage financing is affected by this exchange of property.

#### **Background of the Offense**

22. The predominant form of payment for real estate brokerage services remains the "commission," a percentage of the price paid for the property. In a typical transaction, the seller pays the commission to his or her real estate broker. In Kentucky, the seller and his or her Broker negotiate the Broker's commission, but the Broker is prohibited from including any rebate or price-cutting inducement in their agreement. If the seller's Broker also funds the buyer, then that Broker keeps the full commission. In most cases, however, a second Broker represents the buyer. If the transaction is completed, then the buyer's and seller's Brokers each receive a portion of the commission. The seller's Broker or the seller typically sets the commission level and its allocation between Brokers.

23. As a result of the Rebate Ban, the buyer's Broker is prohibited from offering his or her buyer client any rebate or price-cutting inducement or discount off the commission set by the seller or the seller's Broker.

#### **Relevant Markets**

24. The Commission's Rebate Ban has had, and will continue to have, anticompetitive effects in Kentucky's local real estate brokerage service markets.

25. The relevant service markets are no broader than the provision of real estate brokerage services to sellers of real property and the provision of real estate brokerage services to buyers of real property.

26. The real estate brokerage business is local in nature. Most sellers want to work with a Broker who is familiar with local market conditions and who maintains an office within a reasonable

distance to the property. Likewise, most buyers want to purchase property in a particular city, community, or neighborhood, and they typically want a Broker who has knowledge of the area in which they have an interest.

27. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, Brokers compete with each other and with the Broker-Commissioners.

28. The Rebate Ban applies to all Brokers and consequently affects competition for real estate brokerage services throughout Kentucky.

#### **Conduct**

29. The Kentucky Legislature enacted statutes that authorize the Commission to regulate the licensing and education of Brokers. Kentucky, however, forbids the Commission from promulgating any regulation that in any way fixes prices, establishes fees, or sets the rate at which Brokers are compensated.

30. In 1991, the Commission promulgated an administrative regulation that prohibits Brokers from offering to the general public any item or thing of value, including rebates that reduce fees, to induce clients to retain their services. (See 201 Ky. Admin. Reg. 11:011, Section 1(5); 201 Ky. Admin. Reg. 11:121, Section 1(2).) Specifically, the Commission forbids a Broker "[t]o offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate, or any other thing of value as an inducement." 201 Ky. Admin. Reg. 11:121, Section 1(2).

31. In interpreting its regulations, the Commission has warned Brokers that they cannot compete by offering cash rebates, refunds, or a free home inspection. Nor can Brokers, prior to closing, compete by taking clients out to dinner, donating money to a charity of the customer's choice, or even offering a free photo with Santa Claus. The Commission has announced that, even after the closing of a real estate transaction, Brokers cannot give their clients anything more than a gift worth up to \$100 in value.

32. The Commission's promulgation and enforcement of the Rebate Ban is the product of agreements, combinations, or conspiracies among its Broker-Commissioners and others that has restricted the ability of all Brokers to compete on the basis of price.

33. The Commission has engaged, and continues to engage, in acts in furtherance of these agreements, combinations, or conspiracies, including among other things:



a. Prohibiting Brokers from offering consumers any type of rebate or inducement, including but not limited to, cash rebates, free products and services such as televisions or home inspections, discounts or vouchers for products and services such as home moving services or home improvement stores, and donations to charities on the customer's behalf, on the basis that such conduct violates the Commission's administrative regulations;

b. Prohibiting rebates or other inducements in private contracts that involve Brokers; and

c. Preventing Brokers from offering rebates or other inducements by among other things:

i. Investigating alleged violations of the Rebate Ban;

ii. Asking Brokers to inform the Commission when one or more competing Brokers offers rebates or other inducements;

iii. Instructing Brokers to cease offering rebates or other inducements;

iv. Threatening to bring disciplinary actions against Brokers unless they cease offering rebates or other inducements;

v. Bringing disciplinary actions against Brokers for offering rebates or other inducements; and

vi. Sanctioning Brokers the Commission has found to have offered rebates or other inducements by one or more of the following: suspending licenses, revoking licenses, imposing monetary fines, issuing reprimands, and requiring completion of additional academic credit hours.

34. The Rebate Ban also enables sellers and/or seller Brokers to fix the commission at which the buyer's Broker is to be compensated in a particular real estate transaction, thereby insulating the Brokers from competing among themselves on the basis of price when they enter into agreements with buyers.

35. As a result of the Rebate Ban, Brokers cannot—and thus need not—compete with one another by offering rebates or other valuable inducements.

36. The Commission has worked closely with Brokers and Brokers' associations, including the Association, in its continued enforcement of the Rebate Ban. Among other things, the Commission has rejected proposals to eliminate the Rebate Ban as recently as 2004 after receiving substantial opposition from Brokers.

#### Anticompetitive Effects

37. The Rebate Ban has injured, and continues to injure, buyers and sellers of real property throughout Kentucky. The Rebate Ban restricts competition and deprives the property-buying and

property-selling public of a myriad of price and non-price discounts, including, but not limited to, cash rebates, vouchers or coupons, and discounted or free services related to buying and selling property such as home inspections, title services, or moving services. These rebates and inducements benefit consumers. Real estate brokers and sales associates operating in states without a similar ban offer rebates, inducements, and many of the discounts set forth above to buyers and sellers as they compete to offer their services to buyers and sellers. Such rebates, for example, may amount to several thousand dollars in a single transaction.

38. The agreements, combinations, or conspiracies alleged herein have had, and will continue to have, anticompetitive effects, including:

a. A suppression of price competition in the provision of real estate brokerage services;

b. The limitation of products and services available to buyers and sellers of property; and

c. The creation of barriers to entry into the provision of real estate brokerage services by companies that offer rebates, discounts, and reduced commissions as part of their business model.

#### Violation Alleged

39. The allegations of paragraphs 1 through 38 of this Complaint are re-alleged and incorporated by reference herein with the same force and effect as though set forth in full.

40. Defendant's promulgation, adoption, maintenance, and enforcement of regulations 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2) arise from and result in agreements, combinations, or conspiracies that restrain competition in numerous Kentucky real estate brokerage service markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

#### Request for Relief

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

a. The agreements, combinations, or conspiracies alleged herein restrain trade and are illegal under Section 1 of the Sherman Act, 15 U.S.C. 1;

b. Defendant be restrained and enjoined from, either directly or indirectly, prohibiting Brokers from advertising or offering rebates or inducements;

c. Defendant's regulations 201 Ky. Admin. Reg. 11:011, Section 1(5) and

201 Ky. Admin. Reg. 11:121, Section 1(2) are preempted by the federal antitrust laws and are null and void;

d. Defendant shall mail a copy of the Complaint, order, and explanatory notice to:

i. Each Commissioner, director, representative, agent, and employee of Defendant Kentucky Real Estate Commission; and

ii. Each person licensed to provide real estate brokerage in Kentucky;

e. Defendant publish in its Newsletter the explanatory notice and an article stating that the regulations prohibiting rebates and inducements have been eliminated;

f. The United States recover its costs in this action; and

g. Such other relief as the United States may request and that the Court deems just and proper.

Dated: March 30, 2005.

Respectfully submitted:

For Plaintiff United States of America.

R. Hewitt Pate,  
*Assistant Attorney General.*

Thomas O. Barnett,  
*Deputy Assistant Attorney General.*

Dorothy B. Fountain,  
*Deputy Director of Operations.*

John R. Read,  
*Chief, Litigation III.*

Nina Hale,  
*Assistant Chief, Litigation III.*

Owen M. Kendler,  
Mary Beth McGee,  
Mark A. Merva,  
Maurice E. Stucke,  
*Attorneys.*

*United States Department of Justice,  
Antitrust Division, Litigation III; 325 7th  
Street, NW., Suite 300, Washington, DC  
20530. (202) 616-5935.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-259R]

#### Controlled Substances: Proposed Revised Aggregate Production Quotas for 2005

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed revised 2005 aggregate production quotas.

**SUMMARY:** This notice proposes revised 2005 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

**DATES:** Written comments must be postmarked, and electronic comments