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

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

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

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

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

But buying a home is a complicated task and the purchasing process can be somewhat opaque. Take, for example, the recent house hunting experiences of four of my staffers. The names have been changed to protect the innocent.

Dorothy, who was the buyer in her transaction, retained a broker and blithely proceeded with her purchase without inquiry as to what the total commission costs might be, because she knew in this instance that the fees, though embedded in the purchase price, would not come directly out of her pocket. Lion, who retained an agent to assist in both the sale of his old house and the purchase of his new one, negotiated such a favorable commission rate from his broker that he was required to sign a confidentiality agreement. He is prohibited from talking about the terms of the deal, but we can imagine they were pretty good - for him. Tin Man, who was the purchaser in his transaction, ended up agreeing to compensate his “uber-Realtor” an extra one half percent in the event her share of the seller’s commission did not exceed 2.5 percent. And Scarecrow – and her buyer – dispensed with agents altogether when she sold her house, bypassing commissions completely.

What does this tell us about the residential real estate industry today? (Or, alternatively, what does it tell me about my staffers?) Is this indicative of a market where consumers can get better deals - or superior representation -- based upon an informed evaluation of their options? Or is it reflective of a market where consumers lack even the most medieval level of information upon which to make a decision?

No matter how you ultimately answer these questions, the stakes are enormous. The median price of a single family American home is now approximately $180,000 dollars,[2] and it soars much higher in sought-after areas such as New York, DC and California. Indeed, the median price of San Diego residential real estate is nearly half a million dollars.[3] An estimated $60 billion dollars – roughly one half of one percent of the Gross Domestic Product for 2004 – changed hands last year in real estate commissions, much of it coming from the traditional full-service brokerage fee.[4]

However, the real estate industry - and its traditional business model – is undergoing a sea change. Increasingly savvy customers - empowered by the Internet and the Information Age - are demanding more at lower cost. Consequently, a new category of service provider is surfacing that seems attuned to consumers' clamoring for more autonomy and a greater range of service and price options. These providers - who range from mortgage lenders with brokerage licenses, to flat-fee limited service brokers, to full-service discounters – have deployed Internet technology to drive sales. In the process, they are reallocating home sale commissions that have traditionally gone to full-service Realtors.

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[2] Ibid.

[3] Roger M. Showley, *Real Estate Commissions Questioned*, The San Diego Union-Tribune, July 30, 2005.

[4] Kirstin Downey, *Discounts Ignite State Fights; Trade Groups Battle Regulators Over Requirements on Services*, Washington Post, September 10, 2005, at F01.

Agents, understandably, are feeling as though they are unfairly under siege. They cite to vigorous intra-industry competition - including among the 1.2 million agents who are members of the National Association of Realtors -- and are quick to claim that average commissions have fallen from 6 percent to 5.1 percent over the past 10 years.[5] Realtors also worry about Internet loan companies who provide limited realty services in addition to mortgage financing. The full-service Realtors protest that these competitors, which give their loan customers access to the Multiple Listing Service and then refer them back to the listing agent in exchange for a percentage of the commission, are in effect "wearing two hats" – and free riding – on listings.

Additionally, Realtors are concerned with the integrity of their respective MLSs, many of which are owned and operated by Realtor boards affiliated with the NAR. The Realtors assert that the security and accuracy of the system will be compromised unless local and national NAR affiliates continue to screen its participants and control its distribution. To that end, local boards have set parameters in certain jurisdictions governing who may enter or view the MLS and how entries will be treated. Some boards have downgraded the prominence of certain listings entered by discount and limited service brokers (primarily those pursuant to which a seller's agent is not guaranteed a commission), others have removed these listings completely.[6]

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[5] Bob Dart, *Bush Gives Realtors Pep Talk as U.S. Agencies Take Them On,* Palm Beach Post, May 14, 2005.

[6] For example, the board of the Cleveland MLS revised its policy last year so that properties listed by limited service brokers who allow the home owner the right to sell the

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

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

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

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

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

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

Further complicating matters are various state legislative proposals – heavily backed by full-service providers – which require that real estate agents provide a minimum level of services to clients purchasing or selling property. Despite vigorous discouragement from the federal antitrust agencies, these proposals recently have become law in several states.[9]

Restrictions of this sort erect entry barriers for new business models that provide consumers with the ability to purchase only those services that they want or need – and they lock in a business model that bundles together high-end services. Because they may eliminate competition between these approaches, the Commission generally has argued minimum service requirements can harm consumers by eliminating choices in the marketplace and causing higher prices. Certainly, the threatened proliferation of similar state laws is troubling because once these laws are enacted, there is no going back. And little anyone can do to address potential

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they do not desire, saving significant amounts of money in the process.

[8] Clay Risen, *Realtors v. the Internet*, New Republic, June 3, 2005, as cited by the Progressive Policy Institute, http://www.ppionline.org/ppi_ci.cfm?contentid=253382&knlgAreaID=140&subsecid=900055

[9] In the past six months Alabama, Illinois, Iowa, Texas, Missouri, Oklahoma, and Utah have all passed "minimum service" requirements of some kind. See Kirstin Downey, *Discounts Ignite State Fights; Trade Groups Battle Regulators Over Requirements on Services*, Washington Post, September 10, 2005, at F01.

anticompetitive effects absent repealing the law.

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

To be sure, the type of debate that is pervading the real estate industry, where high technology competition challenges a traditional business model, is nothing novel. Indeed, we have witnessed resistance to Internet-based competition with respect to wine, contact lenses and toy sales, to name just a few. And we have seen, to the benefit of consumers, a quasi-revolution in the travel industry – another business in which agents are compensated largely through commissions.

Travel agents, by the way, have largely adapted to the challenge of high-tech rivalry by concentrating efforts in sectors - like business travel, cruises, and tours - where consumers tend to prefer full-service assistance. The results have been telling: although Internet sites likes

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[10] Damon Darlin, *The 6 Percent Solution: Skip Real Estate Agents,*" N.Y. Times, September 17, 2005, Business/Financial Desk, Section C, Column 2.

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

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

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

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

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

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

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

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

Thank you.

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