III. INDUSTRY PERFORMANCE

In this Chapter we examine complementary sets of statistics from a variety of sources. Each set of statistics relates to the performance characteristics of the real estate brokerage industry. There are two broad questions which we address by this means. The first question is whether the price structure in the industry is as responsive to variations both in aggregate demand for services and individual demand intensity as we might expect to find in a truly competitive industry. The second question is whether the industry is sufficiently competitive so that it supplies to consumers prepared to pay for it information sufficient for such consumers both to select rationally among various firms and to protect their interests in the brokerage process. To answer these questions, we have sought information which would allow us to make comparisons both among geographic markets and over time.

A. PRICES, COSTS, AND RESOURCE UTILIZATION

1. Prices and Costs in Real Estate Brokerage

The first aspect of industry performance we consider is the price charged for real estate brokerage service. While it is common to evaluate the vigor of price competition in an industry through the simple shorthand of examining the profitability of the member firms,59/ that is widely recognized by experts as too simplistic an approach. The lack of "high" profits does not necessarily indicate intense competition. "Low" profits may exist because of general inefficiency, government regulatory policy,60/ or other problems of adjusting supply to

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59/ The usual approach to profitability is to attempt to measure the rate of return on physical capital investment. In real estate brokerage, however, such calculations would tell us little. Brokerage firms typically invest little in physical capital. Most brokerage profits represent a return to human capital, *i.e.*, skills, knowledge, and reputations possessed by owners of firms and by brokers. Total profits as a percent of physical capital would surely overstate the rate of return. Since we cannot measure brokers' investments in human capital, we have no way to estimate rates of return in a meaningful way.

60/ A frequently cited example of an industry in which prices were not competitively determined, but profit rates were low, is the airline industry prior to rate deregulation.

> "If there are multiple sellers . . . and price competition is controlled but other forms of competition are not, nonprice competition may emerge, driving costs up on the more lucrative products or services until supra-normal returns erode. Airline regulation provides an illustration. Until reforms were introduced during the

(Continued)

demand. The hypothesis about the real estate brokerage industry that we are examining is that firms are so interdependent, as a result of cooperative brokering (particularly through the MLS system, where such a system exists), that successful price competition is exceptionally difficult, and that vigorous competition is displaced into promotional efforts to obtain listings, the provision of services of marginal value, intensive advertising, or the expansion of work forces beyond the levels that might normally be expected.

Our approach will be to examine directly several sources for evidence on pricing patterns (using commission rates as a surrogate for prices). We consider both the mathematical distribution of commission rates within markets and the aggregate changes in commission fees earned over time.61/

a. The Evidence on Uniformity of Commission Rates

An alleged high degree of commission rate uniformity in the real estate brokerage industry has been an important focus both of curiosity and of criticism. In determining the underlying validity of the allegation, we have chosen to treat brokers who quote identical commission rates as charging identical prices.62/ We begin by examining the various statistical sources available to us for evidence that might reveal patterns of price uniformity. We then analyze this data to see whether such uniformity is most consistent with vigorous price competition, with price fixing, or with some other explanation

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late 1970s, prices were higher relative to cost on long flights than on short hops. . . . The ample margins on long flights stimulated competitive escalation in the number of flights offered, leaving what appears to have been an inefficiently large number of seats unfilled on the average flight." F.M. Scherer, Industrial Market Structure and Economic Performance, Second Edition (1980) at 485.

See also George W. Douglas and James C. Miller III, Economic Regulation of Domestic Air Transport (1974), Chapters 6 and 7; and George C. Eads, "Competition in Domestic Trunk Airline Industry," in Phillips, ed., Promoting Competition in Regulated Markets, at 16-39.

61/ High profits could temporarily exist due to fees being increased by inflationary housing prices faster than resources could enter.

62/ We recognize that there may be great qualitative and quantitative differences among firms in the services they provide to earn commissions nominally of the same amount. We deemphasize changes in costs relative to prices because of the problems with using industry profitability as a measure of the vigor of price competition. Ideally, what we would like is a measure of the costs of selling an individual home and the price obtained by the broker for the sale. Since it is extremely difficult to quantify the many characteristics of a broker's service, this is also not a

(1) FTC Consumer Survey

In late 1979 and early 1980, the FTC had a survey conducted of recent buyers and sellers of homes regarding their personal experiences with brokers.[63/] Each member of the sampled population who had sold through a broker was asked the commission rate that had been quoted by his or her broker. The distribution of the quoted rates is presented in Table III-1. Eighty-five percent of the sample reported that it was quoted either a commission rate of six percent or one of seven percent.

TABLE III-1

National Sample of Quoted Commission Rates a/
FTC Consumer Survey -- Screener Questionnaires

Commission Rate (Percent)	Frequency	Percent of Total
Less than 5	29	3.1
5	41	4.4
5.5	4	.4
6	492	52.7
6.05	1	.1
6.5	10	1.1
7	302	32.3
Greater than 7	55	5.9
Totals	934	100.0

a/ This information was obtained from "screener" questionnaires mailed to potential sellers. The screener produced a sample group which was subsequently interviewed by telephone for the balance of the survey.

63/ National Family Opinion, Inc. (NFO) performed the survey under contract to the FTC. Additional details of the survey

Sellers also were asked whether before or at the time of sale, they were given a de facto revision of the commission rate for which they had originally contracted — that is whether they were charged a lower commission, received a rebate, or were made a gift by their broker — and the cash value this change represented. The rates initially contracted for and the actual rates paid are presented in Table III-2. Thirty sellers out of a telephone survey of 320 reported receiving reductions which ranged from $100 to $3,500 in value.64/ Factoring in such "after-the-fact" reductions in prices, we found that while eighty-five percent of the sellers surveyed were quoted either a six or seven percent commission rate, seventy-eight percent actually were charged commissions at those rates.

TABLE III-2

National Sample of Commission Rates a/
FTC Consumer Survey -- Second Wave

Commission Rate (Percent)	Frequency Quoted	Frequency Actual	Percent of Total Quoted	Percent of Total Actual
Less than 5	11	21	3.4	6.6
5	14	18	4.4	5.6
5-6	--	9	--	2.8
6	170	160	52.7	49.6
6-7	6	6	1.9	1.9
7	103	90	31.9	27.9
Greater than 7	16	16	5.0	5.0
Totals	320	320	99.3	99.4

a/ As reported in telephone interviews with sellers. Note, the sample size is different from that in Table III-1.

64/ Twenty-nine of the 30 were originally quoted a rate of either 6% or 7%. Minor reductions below $100 were ignored

(2) RESPA Sample

In connection with monitoring the federal Real Estate Settlement Procedures Act (RESPA), the Department of Housing and Urban Development (HUD) collected three large samples of data (including real estate brokerage commission rates) in 1975, 1978, and 1979 from copies of standardized HUD-1 forms.65/ All three samples contained data from selected major U.S. cities and surrounding areas.66/ In addition, the 1979 data included a large survey of HUD-1 forms from all 50 states.

The samples included transactions on both new and existing (i.e., used) homes. HUD-1 forms do not state whether a home was new, so the categories were separated by using a proxy variable. If the seller's name was that of a company, the sale was considered to be a new home. Only homes not sold by a company are considered here.67/ They are referred to as "households only."

The HUD-1 forms provide for either the percentage commission rate (herein referred to as "stated" rates) or the dollar amount of commission to be listed. In some cases both might be listed.68/ Which figure is provided probably depends upon local custom or whether a rebate or discount was given. For example, if a rebate was given on a transaction originally involving a six percent rate, then one would expect the dollar amount of commission to be shown to keep the disclosure accurate.

Because the selling price of the home is also given on the HUD-1 forms, it was possible to calculate the rate paid for those forms showing a dollar commission amount. We refer to these as "calculated" rates. When these calculated rates were compared to the stated rates, the calculated rates were found to be slightly lower on average. We conclude, therefore, that the calculated rates are a very conservative measure of the commission rates actually paid, probably biased toward that minority of transactions which

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65/ Analysis of the RESPA data appears in Michael Carney, Real Estate Brokerage Commission Rates in the 1975, 1978, and 1979 RESPA Samples, 1980. HUD-1 forms are utilized routinely by mortgage lenders to meet federal requirements to disclose settlement or closing costs to home buyers and sellers.

66/ The markets involved are wider than cities. In 1975 data was collected from all mortgage lenders in each of seven counties. In 1978 and 1979 selected mortgage lenders in major cities were surveyed, but again the data extends beyond cities, because loans are made on residences in surrounding areas.

67/ A more complete analysis including both new and existing homes appears in Carney, supra note 65. Our study was concerned only with residential resales. Developers and builders selling new homes and housing tracts often involve fact situations substantially different from those encountered by consumers trying to sell individual residences. Developers often undertake most of the advertising and selling functions themselves.

68/ Sample sizes of stated and calculated rates differ because data is not complete on all HUD-1 forms.

involved some form of rebate.

From the 50-state sample we obtained data on the national pattern of rates.69/ They are presented in Table III-3. The patterns of stated and calculated rates are similar to those of quoted and actual rates revealed by the FTC Consumer Survey.

TABLE III-3

National Distribution of Stated and Calculated Commission Rates — RESPA Sample, 1977 Households Only

Commission Rate	Frequency Stated	Frequency Calculated	Percent of Total Stated	Percent of Total Calculated
Less than 5	268	259	5.6	9.1
5	449	237	9.4	8.3
5-6	--	86	--	3.0
6	2,734	1,467	57.4	51.3
6-7	--	50	--	1.7
7	1,171	659	24.6	23.0
Greater than 7	140	102	2.9	3.6
Totals	4,762	2,860	99.9	99.9

Distributions from the HUD-1 data of stated and calculated rates by "city" (though the areas covered are actually larger) are presented in Tables III-4 and III-5. respectively. Rates cluster around either 6 percent or 7 percent in individual cities, while the totals (like the national samples) tend to average out these effects and hence present a bimodal distribution. City modes are summarized in Table III-6 for ease of reference.

69/ This data does not constitute a national probability sample. Sample sizes from different states are not proportional to state populations.

TABLE III-4

DISTRIBUTIONS OF STATED COMMISSION RATES:
MODES AT 5%, 6% & 7%, BY CITY, 1975,
1978 and 1979 HOUSEHOLDS ONLY

City	N	(%)	Number (and Percentage) of Transactions with Commission Rates . . . Less Than 5%	At 5%	5-6%	At 6%	6-7%	At 7%	Greater Than 7%
1975									
1. Bridgeport	183	(21.8)	4 (2.2)	9 (4.9)	1 (0.5)	166 (90.7)	- (-)	1 (0.5)	2 (1.1)
2. Boston	19	(2.3)	1 (5.3)	1 (5.3)	- (-)	16 (84.2)	- (-)	1 (5.3)	- (-)
3. Washington	53	(6.3)	1 (1.9)	4 (7.5)	- (-)	39 (73.6)	- (-)	9 (17.0)	- (-)
4. Orlando	25	(3.0)	- (-)	4 (16.0)	- (-)	5 (20.0)	- (-)	14 (56.0)	2 (8.2)
5. Des Moines	111	(13.2)	- (-)	1 (0.9)	- (-)	14 (12.6)	- (-)	95 (85.6)	1 (0.9)
6. Denver	97	(11.5)	5 (5.2)	- (-)	- (-)	4 (4.1)	- (-)	88 (90.7)	- (-)
7. Los Angeles	352	(41.9)	21 (6.0)	15 (4.3)	2 (0.6)	290 (82.4)	6 (1.7)	18 (5.1)	- (-)
Total	840	(100.0)	32 (3.8)	34 (4.0)	3 (0.4)	534 (63.6)	6 (0.7)	226 (26.9)	5 (0.6)
1978									
1. Washington	62	(17.5)	2 (3.2)	2 (3.2)	- (-)	46 (74.2)	- (-)	12 (19.4)	- (-)
2. Los Angeles	13	(3.7)	2 (15.4)	- (-)	- (-)	10 (76.9)	- (-)	1 (7.7)	- (-)
3. Houston	41	(11.5)	4 (9.8)	4 (9.8)	- (-)	33 (80.5)	- (-)	- (-)	- (-)
4. Columbus	72	(20.3)	2 (2.8)	2 (2.8)	- (-)	44 (61.1)	- (-)	23 (31.9)	1 (1.4)
5. Atlanta	13	(3.7)	1 (7.7)	- (-)	1 (7.7)	- (-)	1 (7.7)	9 (69.2)	1 (7.7)
6. Rochester	70	(19.7)	- (-)	1 (1.4)	- (-)	46 (65.7)	- (-)	22 (31.4)	1 (1.4)
7. Portland	20	(5.6)	1 (5.0)	2 (10.0)	- (-)	5 (25.0)	1 (5.0)	11 (55.0)	- (-)
8. Seattle	64	(18.0)	1 (1.6)	8 (12.5)	- (-)	5 (7.8)	- (-)	50 (78.1)	- (-)
Total	355	(100.0)	13 (3.7)	19 (5.4)	1 (0.3)	189 (53.2)	2 (0.6)	128 (36.1)	3 (0.8)
1979									
1. Boston	111	(6.7)	- (-)	5 (4.5)	- (-)	81 (73.0)	- (-)	23 (20.7)	2 (1.8)
2. Denver	247	(14.9)	14 (5.7)	21 (8.5)	- (-)	56 (22.7)	- (-)	154 (62.3)	2 (0.8)
3. Washington	112	(6.8)	1 (0.9)	10 (8.9)	- (-)	96 (85.7)	- (-)	5 (4.5)	- (-)
4. Jacksonville	319	(19.3)	16 (5.0)	13 (4.1)	- (-)	67 (21.0)	- (-)	161 (50.5)	62 (19.4)
5. Los Angeles	52	(3.1)	4 (7.7)	3 (5.8)	- (-)	43 (82.7)	- (-)	2 (3.8)	- (-)
6. St. Louis	319	(19.3)	9 (2.8)	9 (2.8)	- (-)	287 (90.0)	- (-)	9 (2.8)	5 (1.6)
7. San Antonio	111	(6.7)	10 (9.0)	6 (5.4)	- (-)	95 (85.6)	- (-)	- (-)	- (-)
8. Seattle	384	(23.2)	14 (3.6)	32 (8.3)	- (-)	118 (30.7)	- (-)	217 (56.5)	3 (0.8)
Total	1,665	(100.0)	68 (4.1)	99 (6.0)	- (-)	843 (50.9)	- (-)	571 (34.5)	74 (4.5)

TABLE III-5

DISTRIBUTIONS OF CALCULATED COMMISSION RATES:
MODES AT 5%, 6% & 7%, BY CITY, 1975, 1978
and 1979, HOUSEHOLDS ONLY

City	N	(%)	Number (and Percentage) of Transactions with Commission Rates . . .						
			Less Than 5%	At 5%	5-6%	At 6%	6-7%	At 7%	Greater Than 7%
1975									
1. Bridgeport	206	(22.1)	15 (7.3)	9 (4.4)	8 (3.9)	171 (83.0)	2 (1.0)	1 (0.5)	- (-)
2. Boston	34	(3.6)	9 (26.5)	- (-)	3 (8.8)	19 (55.9)	- (-)	1 (2.9)	2 (5.9)
3. Washington	66	(7.1)	3 (4.5)	5 (7.6)	1 (1.5)	45 (68.2)	2 (3.0)	2 (12.5)	1 (1.3)
4. Orlando	35	(3.7)	2 (5.7)	4 (11.4)	- (-)	6 (17.1)	- (-)	18 (51.4)	5 (14.3)
5. Des Moines	113	(12.1)	- (-)	1 (0.9)	- (-)	15 (13.3)	3 (2.7)	90 (79.6)	4 (3.5)
6. Denver	102	(10.9)	7 (6.9)	- (-)	3 (2.9)	5 (4.9)	2 (2.0)	85 (83.3)	- (-)
7. Los Angeles	378	(40.5)	34 (9.0)	16 (4.2)	10 (2.6)	294 (77.8)	3 (0.8)	21 (5.6)	- (-)
Total	934	(100.0)	70 (7.5)	35 (3.7)	25 (2.7)	555 (59.4)	12 (1.3)	225 (24.1)	12 (1.3)
1978									
3. Washington	65	(15.3)	3 (4.6)	2 (3.1)	- (-)	47 (72.3)	- (-)	13 (20.0)	- (-)
7. Los Angeles	23	(5.4)	2 (8.7)	1 (4.3)	- (-)	18 (78.3)	1 (4.3)	1 (4.3)	- (-)
8. Houston	50	(11.8)	5 (10.0)	5 (10.0)	- (-)	40 (80.0)	- (-)	- (-)	- (-)
9. Columbus	84	(19.8)	3 (3.6)	3 (3.6)	1 (1.2)	47 (56.0)	1 (1.2)	28 (33.3)	1 (1.2)
10. Atlanta	13	(3.1)	1 (7.7)	- (-)	1 (7.7)	- (-)	1 (7.7)	9 (69.2)	1 (7.7)
11. Rochester	82	(19.3)	5 (6.1)	1 (1.2)	4 (4.9)	42 (51.2)	3 (3.7)	24 (29.3)	3 (3.7)
12. Portland	41	(9.6)	6 (14.6)	2 (4.9)	- (-)	7 (17.1)	1 (2.4)	23 (56.1)	2 (4.9)
13. Seattle	67	(15.8)	2 (3.0)	8 (11.9)	- (-)	5 (7.5)	5 (7.5)	46 (68.7)	1 (1.5)
Total	425	(100.0)	27 (6.4)	22 (5.2)	6 (1.4)	206 (48.5)	12 (2.8)	144 (33.9)	8 (1.9)
1979									
1. Boston	94	(7.9)	6 (6.4)	3 (3.2)	6 (6.4)	50 (53.2)	2 (2.1)	21 (22.3)	6 (6.4)
2. Denver	100	(8.4)	6 (6.0)	8 (8.0)	3 (3.0)	23 (23.0)	1 (1.0)	59 (59.0)	- (-)
3. Washington	75	(6.3)	1 (1.3)	4 (5.3)	3 (4.0)	63 (84.0)	1 (1.3)	3 (4.0)	- (-)
4. Jacksonville	267	(22.5)	18 (6.7)	8 (3.0)	5 (1.9)	50 (18.7)	52 (19.5)	80 (30.0)	54 (20.2)
5. Los Angeles	30	(2.5)	1 (3.3)	1 (3.3)	2 (6.7)	24 (80.0)	- (-)	2 (6.7)	- (-)
6. St. Louis	202	(17.0)	15 (7.4)	6 (3.0)	2 (1.0)	173 (85.6)	3 (1.5)	2 (1.0)	1 (0.5)
7. San Antonio	55	(4.6)	6 (10.9)	4 (7.3)	- (-)	45 (81.8)	- (-)	- (-)	- (-)
8. Seattle	366	(30.8)	11 (3.0)	[illegible] (7.4)	9 (2.5)	102 (27.9)	5 (1.4)	210 (57.4)	2 ([illegible].5)
Total	1189	(100.0)	64 (5.4)	[illegible] (5.1)	30 (2.5)	530 (44.6)	64 (5.4)	377 (31.7)	63 ([illegible].3)

TABLE III-6

Percentages of Calculated and Stated Commission Rates At Modes of 6% and 7%, By City, 1975, 1978 and 1979 Households Only

City	Calculated Rate 6%	Calculated Rate 7%	Stated Rate 6%	Stated Rate 7%
1975				
1. Bridgeport	83%	--	91%	--
2. Boston	56	--	84	--
3. Washington	68	--	74	--
4. Orlando	--	51	--	56
5. Des Moines	--	80	--	86
6. Denver	--	83	--	91
7. Los Angeles	78	--	82	--
1978				
3. Washington	72	--	74	--
7. Los Angeles	78	--	77	--
8. Houston	80	--	80	--
9. Columbus	56	33	61	32
10. Atlanta	--	69	--	69
11. Rochester	51	29	66	31
12. Portland	--	56	--	55
13. Seattle	--	69	--	78
1979				
1. Boston	53	--	73	--
2. Denver	--	59	--	62
3. Washington	84	--	86	--
4. Jacksonville	--	30	--	50
5. Los Angeles	80	--	83	--
6. St. Louis	86	--	90	--
7. San Antonio	82	--	86	--
8. Seattle	--	57	31	56

A total of 16 cities is reported, though not all cities appear in each sample. In all cities but Jacksonville the majority of transactions takes place at a single calculated commission rate (6% in some cities; 7% in others). In seven cities, 80 percent or more of the transactions occur at a single calculated rate in at least one year, and in 11 out of the 16 cities, 80 percent or more take place at either 6 percent or 7 percent.

More information would be needed to explain the tendency toward bimodality that appears in some areas, but we can offer some possibilities. Because the markets involved are wider than cities, there may be neighborhood or other intra-market differences in the standard rate. Even within cities, the difference may reflect the fact that it is more difficult to sell a house in some neigborhoods than others.

(3) MLS Listing Book Samples

As part of our investigation, five metropolitan areas were studied in depth. These areas were Boston, Massachusetts; Jacksonville, Florida; Los Angeles, California; Minneapolis/St. Paul, Minnesota; and Seattle, Washington. For these areas MLS listing books were obtained from local MLSs.70/ Where possible, books were obtained for sample periods in both 1978 and 1979.

Most local markets were found to have modes at either six or seven percent. These are the "normal" modes for virtually all markets, and nationwide a high percentage of real estate brokerage transactions occurred at a commission rate of one or the other.

In all cities except Jacksonville the MLS books showed the full commission rate at which each home was listed. It was thus possible to estimate the distribution of listed commission rates by sampling the listings in the MLS listing books. For each MLS book at least 100 randomly chosen home listings were sampled. Only residential resales were included in the sample.

Table III-7 shows the results of this sampling of MLS listing books. The pattern is similar to that seen in the other surveys, especially the RESPA data for cities summarized in Table III-6

70/ Not all areas of Greater Los Angeles were studied.

TABLE III-7

Percentage of Listed Commission Rates at 5%, 6%, and 7%, Residential Resales Only, MLS Listing Book Sample

	1978			1979		
Listed Commission Rates:	5%	6%	7%	5%	6%	7%
Boston (a)						
GBB-MLS	5%	70%	22%	2%	71%	25%
Quincy/So. Shore-MLS	47%	49%		1%	46%	53%
Cent. Middlesex-MLS	10%	85%	4%		-NA-	
Los Angeles (b)						
SFVB MLS	8%	86%	3%		-NA-	
LA/BH MLS	10%	86%			-NA-	
United MLS		-NA-			80%	
Minneapolis/St. Paul (c)						
Minn-MLS	4%	9%	86%	2%	9%	85%
St. Paul-MLS	3%	46%	50%	3%	37%	43%
Seattle (d)						
EBA-MLS		8%	90%		9%	89%
SW-MLS		13%	84%		8%	90%
NBA-MLS		8%	91%		9%	89%

Sources: (a) Greater Boston Board Multiple Listings Service, August 1978 and March 1979; Quincy/South Shore Multiple Listing Service, August 1978 and March 1979; Central Middlesex Multiple Listing Service, August 1978.

(b) San Fernando Valley Board Multiple Listing Service "Summary" (Listings) dated 3/6/79; Los Angeles/ Beverly Hills Boards Multiple Listing Service "Cumulative Indexes" dated 1/1/78 to 12/31/78; United Multiple Listing Service, current listing set obtained 3/7/79.

(c) Minneapolis Multiple Listing Service, dated August 1978 and March 1979; St. Paul Multiple Listing Service, dated August 1978 and 1979.

(d) Eastside Brokers Association, June 1978 and October 1978; Northend Brokers Association, June 1978 and October 1978; South-West Multiple Listng, June 1978 and October 1978.

(4) Analysis of Commission Rate Uniformity

Table III-4 suggests that, on average, about ten percent of transactions in the cities which we examined involved a stated commission rate of less than six percent, and that for fewer than four percent of transactions was the stated rate below five percent.[71] From our survey of alternative brokers, it seems apparent that few such firms have been able to long survive while consistently charging sellers less than a five percent commission, even if these firms have sought to cut their operating costs and have chosen to offer a somewhat reduced range of brokerage services.[72]

We expect that in a competitively priced market a greater range of commission rates and services would be offered, especially on the low side of the scale. However, we do not know exactly how low competitive rates would go, nor do we know how much the variability in rates and services might increase.

Some observers of the real estate brokerage industry find it odd that the shrewd, entrepreneurial, risk-taking broker willing to base commissions directly on his or her own estimate of the difficulty of selling a particular property appears to be absent from all geographic markets. Instead, firms which charge a constant percentage commission from transaction to transaction, appear to be the rule (exceptions existing only for a very unusual property such as a large estate).

Basic economic theory, as well as history, teaches that it is difficult to create a cartel which can effectively maintain prices over time. The greater the number of participants in a cartel, the likelier it is that one or more will start to cheat on the other members by offering covert discounts. The phenomenon of cartels in each local market for residential brokerage service in this country has, therefore, seemed to be an unlikely explanation for the observed pattern of virtually uniform pricing in each local market.

According to the historical record, brokerage commission rates at one time were defined in most local markets by mutual agreement among brokers to adhere to a particular price list. This is price fixing, and the brokers appear to have been establishing cartels. But the mere existence of a price list and the mere promise to adhere to it usually are not enough to prevent at least some firms from seeking to compete against the cartel price. The question then is what the mechanism of enforcement might have been and why, with the official abolition of such lists and the repeated reminders issued by brokers' trade associations that price competition is now permissible, so little of it is observed today.

Local professional associations, at one time, might have been prepared to expel those who cheated on the cartel price and it is not inconceivable that some state regulatory bodies might have lent their weight to efforts to stabilize prices. The question remains why brokers accepted a restraint on their freedom to set their own prices. We hypothesize that it is because price stability has

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[71] Stated rates provide a better guide to the extent of price variation associated with service than do calculated rates. Calculated rates reflect concessions made by brokers after the listing was signed. These generally do not reflect reduced service but rather attempts by brokers to close a deal by reducing the difference between a buyer's offer price and the net price received by the seller.

[72] See Ch. IV.E.

gone hand in hand with efficient cooperation in selling. We believe that it is the interdependent, cooperative relationship among brokers that has been a critical element first in fostering and then in maintaining uniformity in commission rates, and that explicit agreement is not necessary for the stabilizing mechanism to work.

The commission rate employed in any local market probably is related to the elasticity of consumer demand. Prices do not drift, we hypothesize, because price-cutters will lose the crucially valuable cooperation of their fellow brokers.

If interdependence were the sole factor in determining rates, we would expect the use of a particular rate to be primarily a local phenomenon. That is, while we might expect to find roughly uniform rates within any local market, we might also expect to find a greater degree of variation among different geographic markets, depending on historical experience, and such other factors as average selling price for homes, degree of urbanization, demand for housing, and so forth. However, we found local markets to consistently have commission modes at either six or seven percent. These are the "normal" modes for virtually all markets, regardless of how they might vary from one another, and nationwide a very high percentage of real estate brokerage transactions occurred at a commission rate of one or the other.73/ Six percent, however, apparently was the rate most frequently provided for in the last officially sanctioned schedules of commissions used in most communities.

It can be argued in defense of basically uniform rates that they lessen consumer search costs along at least one spectrum---price. But in the absence of public or private regulation, general uniformity of prices also usually will attract entrepreneurs into the market seeking to exploit and play against the very fact that consumers perceive all other competitors to offer identical services at non-competitive prices.

Constant percentage commissions could be justified on the basis of difficulty of sale, if sales frequency did in fact decline systematically as prices increased over a broad range of offerings. No such relationship emerges from Table III-8. Sales frequency appears to be distributed fairly evenly among price categories below $80,000, a range that included more than seventy-five percent of the sales of existing homes in 1978.

A competitive market should drive prices down to the level of costs. Many costs of selling, e.g., the cost of listing a home on the MLS, appear to be the same for all homes. All things being equal, this would imply that the actual dollar amount of commission paid should more nearly reflect actual cost of each individual firm.

While each broker must average out his or her commissions to cover all expenditures -- those relating to properties sold and those relating to properties for which no buyer is ever found -- we expected to see more variation in commission rates among firms, simply because we expected some firms to be more efficient, more aggressive, or more successful than others and to capitalize on this advantage in the way suggested by traditional economic analysis. We expected to see many more firms attempting, in the process of competition, to successfully "skim" the market by holding their prices close to their estimated variable costs than we did. The degree of rate uniformity we found clearly is inconsistent with a market characterized by the particular kind of vigorous competition common in many other markets.

73/ See Ch. IV, Parts C and G for discussions of fee stabilization activities which originally contributed to the

TABLE III-8

Percentage Distribution of Existing Single
Family Home Sales by Price Class
1978 a/

Price Class ($'s)	Percentage
19,999 or under	5.4
20,000 - 29,999	12.5
30,000 - 39,000	17.4
40,000 - 49,999	16.8
50,000 - 59,999	14.0
60,000 - 69,999	11.3
70,000 - 79,999	7.3
80,000 - 89,999	4.8
90,000 - 99,999	3.2
100,000 - 119,999	2.8
120,000 - 159,999	2.8
160,000 - 199,999	1.0
200,000 - 249,999	0.4
250,000 and over	0.3
Total	100.0

a/ Source: National Association of Realtors, Division of Economics and Research, Existing Homes Sales 1978, Table 9.

b. Commission Per Sale — Annual Rates of Growth

Having studied the dispersal of commissions, we next turn to an examination of their level.

Commission per sale is a measure of broker compensation. By measuring the growth of commissions over the past 30 years, we can compare it with the growth in compensation for other labor services over the same period. Since there is no way to measure commissions directly, we must estimate their growth indirectly from data available on the price of homes. If we knew that all brokers had charged the same commission rate over the period in question, then it would be a simple matter to derive yearly estimates of average commission dollars per sale by multiplying the uniform rate times the average price of a home for each year and dividing by the number of sales.

Since we cannot observe commission rates on a transaction-by- transaction basis, we cannot compute yearly estimates of average commissions. Nevertheless, it is possible to get a conservative estimate of the rate of growth of commissions. To do so we shall first make two assumptions:

1. The average commission rate has been constant since 1950.

2. If there is a relationship between commission rate charged and the price of a house (relative to the price of other houses), it did not change materially between 1950 and 1980.

Taken together these two assumptions imply that the average commission per sale has increased at the same rate as the average price of homes sold.

How much violence do these assumptions do to reality? If anything, they appear to understate substantially the growth in commissions. While there may be marginally more rebates or reductions from the standard rates today than in 1950, the evidence discussed in Section a.(1) above suggests that they are still relatively few.

Of much greater significance are the standard (modal) rates themselves. The evidence which exists indicates that commission rates rose from 5 to 6 or even 7 percent in most areas of the country between 1960 and 1979.74/

Keeping in mind the understatement caused by the assumptions, we examine the data on average and median prices of new and existing homes as presented in Table III-9, together with the average annual rate of growth for the period 1968 to 1978 for each series.75/

74/ Prof. Fred E. Case, co-founder of the UCLA Housing, Real Estate and Urban Land Center, a nationally-recognized brokerage scholar, estimates that nationwide the average commission rate went from 5% in 1967 to somewhere between 6% and 7% in 1979. Case, Residential Brokerage; History, Characteristics, Problems, supra, note 57, at 1-5. See also Chapter IV, Part G.

In the RESPA national sample, only 9.1% of transactions in 1979 are at a rate lower than 5%. Eighty-three percent are at rates greater than 5%.

75/ The natural series to use would be average price of existing homes. The National Association of Realtors has been collecting prices of existing home sales only since 1968. The Bureau of the Census has published average and median prices of new homes for each year since 1963, and the series on median prices can be extended back (with interruptions) using decennial census data from 1950 and 1960 and surveys made by the Bureau of Labor Statistics in 1954, 1955, and 1956.

TABLE III-9

Average and Median Sales Prices of Existing And New One-Family Houses for the United States

	Average Price		Median Price	
Year	Existing (a)	New (b)	Existing (a)	New (b)
1979		$71,900 p		$62,900 p
1978	$55,500	62,500	$48,700	55,700
1977	47,900	54,200	42,900	48,800
1976	42,200	48,000	38,100	44,200
1975	39,000	42,600	35,300	39,300
1974	35,800	38,900	32,000	35,900
1973	32,900	35,500	28,900	32,500
1972	30,100	30,500	26,700	27,600
1971	28,100	28,300	24,800	25,200
1970	25,700	26,600	23,000	23,400
1969	23,700	27,900	21,800	25,600
1968	22,300	26,600	20,100	24,700
1967		24,600		22,700
1966		23,300		21,400
1965		21,500		20,100
1964		20,500		18,900
1963		19,300		18,000
1959				15,200
1956				14,300
1955				13,700
1954				12,300
1950				8,800
Average Compound Annual Percentage Increase 1968 - 1978	9.5	8.9	9.3	8.5

Sources: (a) National Association of Realtors, Division of Economics and Research, Existing Home Sales 1978, Table 14, at 39.

(b) 1963-1979: U.S. Department of Commerce, Bureau of the Census, Construction Starts Branch, Construction Reports. 1979 figures were preliminary.

1959: Estimated from 1960 U.S. Census of Housing, Volumes II and V.

(TABLE III-9 continued)

1954-56: U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1231, New Housing and Its Materials, 1940 and 1956, Table 8, at 38.

1950: 1950 U.S. Census of Housing, Volume IV.

Notes: Prices for 1954, 1955, and 1956 are "proposed selling prices" indicated by builders.

1959 price is value reported by owner.

For 1963-1979 and for 1950 the data equals actual sales prices.

p - 1979 prices were preliminary estimates.

Since we are interested only in growth rates, the median price of new homes, rather than the average price of existing homes, is acceptable for our purposes. The four series grow at about the same rate during the period for which they overlap, and the median new-house price, as the table reveals, exhibits the slowest growth rate, lending another conservative bias to our estimate of growth in commissions.

c. Comparison of Commission Growth Rates with Other Data

Average commission per sale is the average cost of brokerage services to the seller associated with selling a house. Over time, the increase in this cost must be due either to an increase in the compensation received by brokers for work performed, an increase in the amount of work performed to make a sale, or a combination of both.

For purposes of exposition let us make the temporary assumption that the entire increase in average commission represents an increase in compensation. Let us further assume (also temporarily) that, on average, the number of transactions per year handled by a broker has not changed, and that there is also no change in the relative proportion of his or her time that a broker spends selling houses.

TABLE III-10

Comparison of Growth in
Estimated Compensation

		Compound Annual Rate of Growth		Total Percent Increase
		1950-1963	1963-1979	1950-1979
Real Estate Commissions	(a)	5.66	8.13	615
Salaries of Professional, Administrative and Technical Support Workers	(b)		5.9)	366
Wage of Salary Income of all Male Professional, Technical or Administrative Workers	(c)	4.9	)	
Salaries of Clerical	(b)		5.8)	337
Wage or Salary Income or all Male Clerical Workers	(c)	4.5	)	

Sources: (a) Computed from Table III-9.

(b) U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2004, National Survey Professional, Administrative, Technical, and Clerical Pay, (March 1978), Table 1, at (with update for 1979)

(c) U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P.60, No. 69; Income Growth Rates in 1939 to 1968 for Persons by Occupations an Industry Groups, Table 17, at 53.

Under these assumptions, average commission corresponds exactly to a wage (i.e., a measure of compensation per unit of time spent working), and it makes sense to compare the rate at which commissions have grown over time with the growth rate of wages for other activities.

The years for which we have an unbroken series of estimated commissions (1963-1979) coincide almost exactly with those during which the Bureau of Labor Statistics conducted its annual survey of white collar salaries (1961-1979). Annual rates of growth of the two series are compared in Table III-10. Over the 16 years of overlap, commissions grew at a rate more than two points (or more than one-third) faster.76/

Between 1950 and 1979, consumer prices increased by 204 percent.77/ As Table III-10 indicates, the increase in salaries of white collar workers was 366 percent for this period, while estimated average commissions rose by 615 percent -- roughly three times the percentage increase in consumer prices.

If, instead of assuming no increase in prevailing commission rates, one were to make the most likely assumption that it increased from 5 to 6 percent in most areas at some time during this period, commissions would be increased by 758 percent — more than twice the increase in white collar salaries.

This is not to say that individual brokers have actually experienced such an increase in earnings. Rather, since entry into this occupation is relatively easy, we believe that the numbers of salespersons and brokers has increased and that each broker (on average) handles fewer transactions now than in the past. They may spend more time and resources competing for each listing, and they may spend more time finding buyers. Thus, while industry revenues have increased greatly, these may be spread among more individual brokers and salespersons.

Studies of the productivity of real estate agents support this view. Gillies and Mittelbach found that the number of real estate licensees in California increased by 47 percent between 1950 and 1956, while the total number of transactions handled by brokers increased by only 31 percent.78/ Thus, transactions per licensee fell by 11 percent over the period. Fred Case reports that, on a national basis, transactions per licensee declined by about 7 percent between 1967 and 1975.79/

All persons licensed to sell or broker are not, of course, engaged in doing so, and the proportion of licensees employed in actual practice or full-time practice is not stable over time. When real estate markets are active, the average licensee is more inclined to be in the business of brokerage than when conditions are slow, so that statistics may tend to overstate productivity as the market heats up by failing to accurately capture the number of persons actually employed in the business.

76/ For years prior to 1963 the table utilizes annual income figures reported in Current Population Reports by the Bureau of the Census.

77/ Computed from Economic Report of the President (1980), Table B-49.

78/ James Gillies and Frank Mittelbach, "The Real Estate Commission Rate" California Real Estate Magazine (June 1959), at 23.

79/ Case, *supra*, note 57, at 1-5. One cannot say that this represents a trend since there is considerable year-to-year fluctuation.

A recent study commissioned by the NAR appears to take account of this problem. Arthur D. Little, Inc. reported that:

> Salesperson transactions rates in the residential real estate brokerage industry (houses listed or sold per unit time per full-time equivalent salesperson) have been decreasing in recent years.

The report goes on to state that reasons for declining productivity include a tendency for firms to compete by adding staff or increasing services to clients rather than reducing price.80/

Based on these studies and extensive contacts with industry representatives nationwide, we conclude that brokerage industry productivity, measured by sales per licensee over time, has almost certainly declined in recent years.81/

2. Implications of the Pricing of Brokerage Services for Performance

a. The Cost of Brokerage

When market forces are prevented from driving prices to their lowest competitive levels, the clearest and most obvious effect is that consumers pa[y] more than they would in the absence of restrictions on price competition. Wh[ile] we do not know what average commission rates would turn out to be in a truly price competitive market for real estate brokerage services and cannot therefore calculate precisely any consumer injury or the trade-offs that may result from artificial price levels, we can illustrate why the topic is one of importance.

The data in Table III-1 through III-3 suggest that, conservatively speaking, 80 percent of sales of existing homes made through brokers entail payment of a brokerage commission equal to or greater than 6 percent of the sales price. Our consumer survey also indicate that better than 80 percent of all sales of such homes are made through brokers.82/ These estimates imply that approximately 64

80/ Vincent Giuliano, et al., The Challenge of Success, report of an independent study commissioned by the National Association of Realtors (Cambridge, Mass.: Arthur D. Little, Inc., 1979), at 71-72 (hereinafter, A.D. Little).

81/ Statistics relating to the percentage of the population holding a real estate license also indicate declining productivity. At the top of the active market of the 1920's one person in every 80 in California held a real estate license. The Depression reduced this to below one in every 200. Since then, however, the proportion of the population holding licenses has increased steadily. Today one person in every 50 in California is a real estate licensee. Industry literature statements also substantiate this pattern. See Ch. IV, Part A.2.d.

82/ FTC Consumer Survey, Cross Tab of Screener Questions 9 and 11.

percent of existing homes sold in the United States are sold subject to a commission of at least 6 percent. What might the savings be from a 1 percent reduction in the "standard" 6 percent rate? According to the NAR, the total dollar volume of existing family homes sales in 1978 was $216.7 billion.83/ Sixty-four percent of that figure is approximately $139 billion, and a one-point reduction in commissions on these homes would have yielded a saving to consumers of over $1.3 billion for 1978.84/

b. Long-run Implications of the Level of Rates

(1) The Use of Brokers

If brokerage commissions were lower the number of transactions handled by brokers might slightly increase. We have no estimate as to how many sellers not currently utilizing brokers would choose to do so at lower commission rates, but the number would appear to be fairly small in view of the relative inelasticity of the demand for brokerage services (as discussed in Ch. II).

A more significant effect of reduced commissions on resource allocation would appear to be a reduction in the number of firms and salespersons. That effect is discussed below.

(2) The Number of Brokers

When the rewards for any occupation are inflated, the occupational choices of individuals are distorted, and, in the absence of barriers to entry, people will enter that occupation in excess numbers — in essence bidding away those higher rewards by lowering the productive value of each worker in the industry. If there are in fact higher-than-competitive commissions in the brokerage industry, that can be expected to have had the effect of attracting excess entry into the business of selling real estate. The goods and services such individuals would have produced in alternative fields will have been lost to the economy and are a measure of resource misallocation.85/ Fred Case estimates that in 1979, there were 819,000 brokers and 1,218,000 salespersons licensed in the

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83/ National Association of Realtors, Division of Economics and Research, Existing Home Sales 1978, Table 6, at 31.

84/ Our earlier analysis of price trends indicates that a reduction of at least two points would be necessary to eliminate the differential between increases in commissions and increases in salaries for other white collar workers.

85/ This foregone alternative production is actually a measure of the maximum resource misallocation loss and would be a strictly correct measure only if consumers derived no value from the increase in real estate services over what a competitive market would have provided. The value of such services would appear to be small when compared with the excessive amount of brokerage services apparently available.

U.S.[86] If only 10 percent of those salespersons had been attracted as surplus workers into the business of brokerage by the apparent opportunity to earn higher-than-competitive commission rates, and if their average productive value in alternative endeavors had only been $10,000 a year, foregone production would still have totalled in excess of $1.2 billion.[87]

3. Conclusions

The evidence indicates that brokerage commission rates are quite uniform within local markets. In most markets, the prevailing rate is either 6 or 7 percent. Furthermore, the dollar value of commission fees per transaction has increased very substantially in recent years when compared to the general rate of inflation or the incomes of other white collar workers. At the same time, there is at least some evidence that brokerage industry productivity apparently has declined in recent years.

Available statistics, therefore, strongly suggest that forces other than free competition are affecting the level at which commission rates are set.

B. CONSUMER INFORMATION AND SERVICE

1. Introduction

This section describes the performance of the real estate brokerage industry in terms of the information and services provided to consumers and notes some of the problems that arise in the course of the broker/client relationship.

Real estate brokerage essentially is an information industry. Brokers provide information useful to consumers in two types of search endeavors: choosing a principal brokerage firm with which to deal in buying and selling a house, and choosing from among the offerings that the firm subsequently presents for consideration. Brokers and salespeople advertise and promote themselves in an effort to convince sellers and buyers to use their particular firm, and in the process may provide information about the fees and services they can offer. Additionally, brokers and salespeople help buyers search for homes an sellers search for buyers. In this activity they perform both the market-making function, matching buyers and sellers, and a representation function of negotiating for and advising consumers about their alternative choices.

In this section the nature of the information and service which brokers and salespeople provide to consumers in these various capacities is briefly analyzed.

86/ Case, supra, note 57, at 1-3.

87/ Case, supra, note 57, at 1-5, estimates that the average real estate licensee sells about two homes per year. Even if two-thirds of licensees are inactive, transactions per active licensee would still be only about six per year.

2. Information Regarding the Search for a Broker

Four out of five consumers search for a broker prior to the sale or purchase of a home.88/ The selection of a broker can be confusing and difficult. What role do brokers play in this search?

To determine how brokers perform in this process, we pursued two questions:

(1) Are consumers aware of important fundamentals, such as variations in price and service, needed to select a broker rationally?; and

(2) Do brokers compete in providing consumers with adequate information for consumers to discriminate rationally in their selection of a broker?

Our evidence indicates that consumers usually are unaware of two key fundamentals of broker selection, and that brokers today generally are not a particularly good source for the important information needed for informed consumer choice. We will examine the evidence regarding first sellers and then buyers.

a. Sellers

The FTC's Los Angeles Regional staff, working through the national marketing research firm of National Family Opinion, Inc. (NFO), surveyed samples of home buyers and sellers throughout the United States in late 1979 and early 1980.89/

To evaluate the status of consumer knowledge and of broker information services, the FTC and NFO staffs designed survey questions to explore the issues of fee negotiability and the role the broker plays in the transaction. These issues are central to consumer knowledge about the prices brokers charge and the services brokers provide, respectively. If they misunderstand these central facts about prices and services, consumers lack important information needed to make informed selections among brokers.

Specifically, we examined: (1) the extent to which consumers understand that commission rates are not fixed by law or otherwise, and may therefore be negotiated; and (2) the extent to which consumers understand the role the broker will play in the real estate transactions, including the duties owed by brokers to the various parties.

Our survey results reveal a low level of seller knowledge or understanding of these two key aspects of the brokerage transaction.

88/ See FTC Consumer Survey Exhibit, Screener Question 11.

89/ For a more detailed report and analysis of the FTC Consumers Survey see Consumers' Experiences with Real Estate Brokers: A Report on the Consumer Survey of the Federal Trade Commission's Residential Real Estate Brokerage Investigation, an FTC staff report written by Gerard R. Butters. See also the Report of the FTC Real Estate Brokerage Consumer Survey from National Family Opinion, Inc., 1980.

(1) Seller Knowledge of Fee Negotiability

A substantial number of recent home sellers believed that commission rates are fixed by law or by the local Board of Realtors. Seller Question 36 asked: "How do you think commission percentage rates are determined?" About half of the sellers questioned said they had no idea how commission rates are determined. In addition, approximately 10 percent of the sellers construed the question as referring to the calculation technique used, answering that rates are set "by percentage." Of the remaining 40 percent of the sellers, approximately 50 percent believed that rates are fixed by law or by Boards of Realtors.90/

Seller Question 60 asked for a response to the statement, "commission percentage rates are fixed by law." A total of 27 percent of all sellers agreed or agreed strongly with this statement. As the results from Question 36 demonstrate, consumers often cite other possible sources of fixed commission rates, such as Boards of Realtors. Since Question 60 only mentions the law as a source of commission rates, the 27 percent figure represents only one part of the larger consumer group which believes the rates are fixed by one source or another.

Exactly 60 percent of those responding to Question 60 did not disagree with the statement. Thus as many as three-fifths of recent sellers may have been unaware of the negotiability of commission rates.

Our Alternative Brokers Survey, which sampled the views of 147 alternative brokers nationwide in 1979-80, also revealed that consumer ignorance of fee negotiability is widespread and may be a barrier that must be hurdled by would-be price-competitive brokers. Question 13 (Part V) in that survey asked the alternative brokers to indicate the occurrence, on a scale from "frequent" to "never," of the problem of "[c]onsumer belief that commission rates are fixed by law or are otherwise non-negotiable." The brokers indicated this mistaken belief was their second most prevalent problem: 62 percent of the brokers indicated the problem was "frequent" in their first year of operations; 91 percent found it at least an "occasional" problem in the first year.

90/ Of these 40% of the sellers, 44% answered that rates are set by law or Boards of Realtors. Most of the remaining sellers answered that rates were set by the realty company, according to the classification scheme used by NFO staff. However, a portion of this latter group answered that the rates are "fixed by the Realtors," a response which may indicate a belief that the Boards of Realtors fixed the rates. If a portion of this group is added to the 44% figure given above, then it may be raised to the 50% figure given in the text. Some bias may have been introduced by the way in which the question was phrased. For example, the word "determined" may have suggested to at least some respondents that the correct response was to mention some specific human agency rather than a term such as "the market." Bias of this type exists, inevitably, in any attempt to conduct a survey, and must be borne in mind in interpreting the resulting data.

(2) Seller Knowledge of the Role of the Broker

Our Survey also indicates that sellers do not perceive the role the broker plays in the transaction in the same way brokers do. The general industry view is that as a legal matter the broker or salesperson working with the buyer represents the seller and not the buyer, even if the broker who has a contract with the seller works for a different brokerage firm. In particular, according to the industry view, once negotiations between the buyer and a seller begin, it is the duty of the broker working with the buyer to obtain the highest possible price for the seller. This notion of "representation" is explained further in the remainder of this chapter and in Chapter IV.F. below.

In contrast, most of the sellers of homes in our survey expressed their belief that the broker working with the buyer "represents" the buyer. In response to Seller Question 50, which asked "Who do you think the other agent was representing?," 81 percent of the sellers who expressed an opinion said that the other broker in the transaction represented either the buyer or the buyer and the seller. Only 6.3 percent of the sellers held the industry view that the broker represents the seller only. A total of 11 percent of the sellers indicated a belief that the broker working with the buyer in fact represents himself or herself.

These figures include a number of cases in which the buyer and seller used the same broker, so there was in reality no "other broker." Removing these cases from the sample, 82 percent of the remaining sellers responded that the broker represented the buyer and not the seller.[91/]

In interpreting these results, it must be recognized that since the survey questions did not define the term "representing," consumers may attach a different meaning to the term than the legalistic meaning understood by real estate attorneys and brokers. For example, buyers may be responding in part to the fact that brokers provide buyers with general market information, useful advice concerning the selection of houses to inspect, presenting an offer to the seller, help in obtaining a loan, or other services.

(3) Broker Role in Providing Information

Our second inquiry concerns the information brokers provide to help sellers in the choice of brokers.

The high level of unawareness among recent sellers indicates that the disclosures brokers make today are not generally effective in providing to consumers information on either the negotiability of fees or the presumed legal role of brokers. The lack of awareness of recent sellers suggests that many brokers simply may not provide this information to consumers. This suggestion is

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91/ See FTC Consumer Survey Exhibit, Seller cross-tab comparing Question 50 with Question 52 ("Was the agent the buyer used from the same firm as your agent or a different firm?"). About 10% of the sellers answered "don't know" to Question 50. If these sellers are included in the sample, then the percentage of sellers who responded that the broker represented the buyer and the not the seller is reduced to 74.4%.

supported by the findings in our five City Summaries,92/ our consumer survey,93/ and our interviews with brokerage industry experts nationwide.94/

The sellers results also suggest one reason why brokers might not perceive it in their interest to provide this information: Sellers who think rates are negotiable are more likely to bargain over fees than those who think rates are fixed.95/

In general, the trend of all of our correlations between the degree of seller's exposure to the brokerage process and knowledge of the intricacies of the brokerage transaction reveals no significant relationship between these two variables. For example, the number of homes bought or sold by the seller does not correlate significantly with increased knowledge that commission rates are negotiable.96/

b. Buyers

The results from the buyers questions in the FTC Consumer Survey reveal a pattern of consumer unawareness and ineffective broker disclosure similar to the pattern with sellers.

(1) Buyer Knowledge of Fee Negotiability

Buyer Question 39 asked: How do you think real estate commission percentag rates are determined?" Almost exactly half of our buyers sample said they did not know how commission rates are set. An additional 18 percent of the respondents construed the question as referring to the calculation technique used, answering that rates are set "by percentage." When both of these groups

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92/ See generally, City Summaries of FTC staff studies of brokerage markets in Los Angeles, Seattle, Boston, Minneapolis-St. Paul, and Jacksonville.

93/ Seller Question 40 asked for comments about commission rates made by the seller's broker. Only 6.4% of the sellers said that their brokers told them that commission rates are negotiable.

94/ The consumer belief that fees are not negotiable may reflect the fact that in most cases brokers will not negotiate their fees. In most cases brokers do not compete for listings by lowering their fees, and consumers do not select their brokers on the basis of their fees.

95/ See FTC Consumer Survey Exhibit, Sellers Results Analysis, comparing Question 38 (on attempts to bargain) with Question 60R (on knowledge of negotiability).

96/ See generally FTC Consumer Survey Exhibit, Seller cross-tabs of Question 57 by Question 36, Question 57 by Question 53, and Question 57 by Question 61.

are removed from the sample, 41 percent of the remaining buyers responded that rates are fixed either by law or by the Boards of Realtors.97/

Buyer Question 53, a question identical to its counterpart sellers question, asked buyers whether they agreed or disagreed with the statement "commission percentage rates are fixed by law." One-third (33%) of all buyers agreed or agreed strongly with this statement. Three-fifths (60%) of this sample of recent buyers failed to disagree with this false statement, a result identical to that of the parallel sellers question.

(2) Buyer Knowledge of the Role of the Broker

Our Consumer Survey revealed that the level of buyer knowledge of the role of the broker is also low.

Buyer Question 31 asked: "Who do you think the agent who handled the purchase of your house was representing?"98/ A total of 57 percent of the buyers believed that the broker with whom they were dealing was representing them. A total of 66 percent of all buyers believed the broker was representing either the buyer, or the buyer and the seller, in the transaction. Thus nearly two-thirds of all buyers in our study believed that representation was being provided to the buyer.

Where a cooperating broker was involved, 72 percent of the buyers believed that the cooperating broker was representing the buyer and not the seller.99/ Even 31 percent of the buyers in transactions where only one broker was involved believed that the broker represented the buyer.100/ However, as in the case of the sellers survey, there is no guarantee that buyers understand the term "representation" in the same way as brokers or attorneys.

(3) Broker Role in Providing Information

The results of the buyers survey also support the conclusion that brokers do

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97/ Using the methodology outlined in note 33, supra.

98/ About one-third of the buyers had participated in transactions where only one broker was involved; about two-thirds participated in transactions with a cooperating broker. See FTC Consumer Survey Exhibit, Buyer Questions 46a and 46b. In either case the buyers would be referring to a broker who probably owed duties primarily to the seller.

99/ FTC Consumer Survey Exhibit, buyer cross-tab comparing Questions 31 and 46.

100/ Id. The NAR view is that the cooperating broker, working with the buyer, is nevertheless a subagent of the listing broker and seller, owing duties primarily to the seller, including the duty to sell the house for the highest price possible. See Ch. IV.F.

not communicate certain information of importance to consumers.

Buyer Question 40 asked how buyers learned what they knew about commiss rates. Nearly a third (31%) of the buyers indicated they learned what they knew about rates from either their own or from another real estate agent or broker.

In general, brokers do not appear to effectively provide consumers with information relating to the negotiability of commission fees or the role of the broker in the transaction. And consumers may base their opinions on negotiability on the conduct of the brokers. Specifically, the consumer belief that commissions are not negotiable may reflect the fact that their own broker never offered to negotiate and they never thought to inquire about the possibility because of a perceived lack of price competition in the industry.

c. Conclusions

The selection of a broker is a very large purchasing decision. For example a 6 percent commission rate on a median- priced home in California involves a consumer cost of $6,000 in brokerage services. Despite the magnitude of this decision, many consumers are unaware of basic aspects of the decision, including that the brokerage fee is negotiable, and that the brokers' services may not be as buyers believe them to be.

The state of consumer information relating to these important terms of the transaction provides some evidence of an important deficiency in the performance of the information function of the real estate brokerage industry.

3. Information and Service Regarding the Search for Homes or Buyers

Once a broker is selected, he or she begins the tasks related to helping a client find a home or a buyer. These tasks consist of two functions: the "market-making" function and the representation function. The next sections analyze the performance by the brokerage industry of these two functions.

a. The Market-Making Function

The first aspect of real estate brokerage is market-making: brokers match homes with buyers to produce sales. This is primarily an information function. Brokers gather information on available homes and interested buyers and make thi information available to buyers and sellers. Brokers provide optimum service when they have access to and use the maximum amount of information. Sellers wai brokers to provide the maximum possible exposure for their homes. Buyers want brokers to obtain and screen information about the maximum possible number of suitable homes.

To evaluate broker performance of this function, we examined the quality ar quantity of the information brokers provide to consumers.

The results from our Consumer Survey and other sources suggest that sellers are receiving many of the market-making services they desire. These services include placing the sellers' homes on an MLS, showing homes to best advantage, holding "open houses" to show homes, and providing knowledge of the housing market. (See Figure 1 below.) All these services are different methods of facilitating the flow of information and thus maximizing home exposure.101/

101/ The consumer survey could not, of course, measure the degre to which consumers could adequately measure the quality of these services. For example, was the home actually placed on the MLS as quickly as possible?

Figure 1: Selected Services to Sellers

Importance of Factor in Broker Selection:	Very Important	Important	Somewhat Important	Of Little Importance
Agent's ability to place home on MLS	56.9%	32.8	5.5	4.9
Agent's ability to show home to best advantage	48.6	37.4	9.2	4.9
Agent's willingness to hold "open houses"	26.7	28.2	21.0	24.1
Agent's knowledge of housing market	63.5	29.0	5.5	2.0

Extent to Which Broker Provided Service:	A Great Degree	Some Degree	Little Degree	No Degree
Agent's ability to place home on MLS	81.2%	11.8	1.7	5.2
Agent's ability to show home to best advantage	61.1	29.4	6.3	3.2
Held your house open for "open house"	32.9	19.5	10.2	37.3
Knowledge of housing market	77.0	21.6	1.1	.3

Similarly, home buyers appear to receive many of the market- making services they desire. These services include the extent to which brokers provide knowledge of the housing market, ability to utilize the MLS, and ability to screen out homes buyers are not interested in. (See Figure 2 below.)

Figure 2: Selected Services to Buyers

Importance of Factor in Broker Selection:	Very Important	Important	Somewhat Important	Of Little Importance
Agent's knowledge of housing market	62.5%	29.0	6.0	2.4
Agent's ability to utilize MLS	52.7	24.5	14.2	8.5
Agent's ability to screen out homes buyer is not interested in	59.5	24.8	10.6	5.1
Extent to Which Broker Provided Service:	**A Great Degree**	**Some Degree**	**Little Degree**	**No Degree**
Agent's knowledge of housing market	68.7%	26.8	3.6	.9
Agent's ability to utilize MLS	65.4	19.8	5.6	9.3
Agent's ability to screen out homes buyer is not interested in	59.0	28.6	3.6	7.0

Both sellers and buyers in our Consumer Survey, when they were asked to rat their general satisfaction with their brokers' performances, rated their brokers at a very high level. A large majority of both buyers and sellers gave ratings in the 8 to 10 range on a scale of 10.102/ (The caveat, of course, that we feel we have to stress, is that these very buyers and sellers, while they may be eminently qualified to judge their own satisfaction, were not here being asked t judge something they might not be qualified to judge objectively: the true of the service they received.103/ Additionally, some experts believe that

102/ Seller Question 19: 70% were in the 8 to 10 range; Buyer Question 16: 62% were in the 8 to 10 range.

consumer satisfaction is a function less of perceptions as to what the brokers did or did not do than of the price ultimately received or paid for a house.)

In opposition to positive aspects of broker performance, there are occasional, negative brokerage practices which restrict information to consumers and the market-making function of brokers. The most significant of these are practices familiar to industry members, and two have long been a subject of industry concern and industry efforts at self-policing: self-dealing and "vest-pocket" listings. A third practice which we identified is of concern both because of its possible impact on price competition for brokerage service and because buyers and sellers often are urged by members of the profession to rely on a single broker either as a source of information on all properties available through a MLS or to believe that "the entire MLS is working for you." This is the practice of "steering."

(1) Self-Dealing

Historically, broker self-dealing has been one of the industry's most prevalent consumer problems. The self-dealing broker is the seller's agent who directly or indirectly purchases the seller's house without disclosing his or her interest in the purchase. While broker purchases, properly disclosed, may be entirely appropriate, serious harm is likely to occur where the broker purchase is undisclosed. State laws and the Realtor Code of Ethics have attempted to deal with this problem for many years. Under the law in thirty-seven states and under the Realtors' Code of Ethics, the broker has a duty to disclose to the seller when he or she is acting as a principal.104/

While the states and industry trade associations have attempted to control this practice, industry sources contend that it still occurs. Textbooks dealing with real estate law indicate that violation of this duty to disclose has been a frequently litigated issue relating to the duties of brokers.105/ State licensing agencies indicate that they continue to receive numerous consumer complaints alleging self-dealing by brokers.106/

103/ See, e.g., Report of Interview with Horald H. Kassarjian, Professor of Marketing, UCLA Graduate School of Management (July 24, 1979), at 1; Donald J. Hempel, Professor of Marketing, Univ. of Connecticut Center for Real Estate and Urban Economic Studies in A Comparative Study of the Home-buying Process in Two Connecticut Housing Markets: CREUES Real Estate Reports #10 (1979), at 165, et seq. (discussion of broker control over awareness and thus satisfaction of consumers).

Cf. Case, supra, note 57, Part 5, at 7 (discussion of seller satisfaction as affected by overall selling price).

104/ See Appendix B. Section 1.

105/ See, e.g., California Continuing Education of the Bar, Regents, University of California, California Real Estate Sales Transactions (1967), at 156-7.

106/ See, e.g., Report of Interview with R. Arnold, F. Carasko, California Department of Real Estate, Los Angeles (March 19, 1979). See also City Summaries, supra, note 92

Since self-dealing is, by definition, unknown to the consumer, the FTC Consumer Survey could not measure the prevalence of this practice. However, our information from industry sources suggests that self-dealing continues to some extent.

(2) "Vest-Pocket" Listings

"Vest-pocket" listings are those listings which a broker purposely withholds from the MLS, usually because the listing is undervalued and will sell quickly and easily. The broker, by failing to advise the client that the asking price is too low, and then failing to list it on the MLS, also avoids splitting the commission with a cooperating broker.

The practice of brokers placing only their relatively high-priced or more difficult to sell listings on the MLS was one of the historic problems of the industry.107/ For this reason, many MLSs are "mandatory," requiring that their members submit all listings of a certain type. Other MLSs, however, remain "voluntary," allowing broker discretion in listing. Even mandatory MLSs may still face the problem of "vest-pocket" listings, since it is difficult to detect violations of the mandatory listing rules.

We tested for "vest-pocket" listing effects as follows. If brokers who are members of voluntary MLSs regularly withhold more of their easy-to-sell listings than those brokers who belong to mandatory MLSs, the voluntary MLSs would be expected to contain, on average, properties relatively more difficult to sell. These properties stay on the market for a longer period of time than the properties on a mandatory MLS. Such statistics must, of course, be read with caution, particularly because we were unable to control for such factors as variations in demand for housing or availability of financing between the markets served by mandatory and voluntary MLSs.

Nonetheless, our MLS survey results show differences of about 10 percent between the voluntary and mandatory MLSs. Mandatory MLSs answering our survey indicated an average time-on-market of 65 days. Voluntary MLSs indicated an average time-on-market of 71 days.108/

(3) Steering

Steering takes its name from the practice of cooperating brokers "steering" customers away from disfavored listings. A common form of steering consists of cooperating brokers failing to show their potential buyers homes which seem

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107/ See Ch. IV.C. for a discussion of the history of the MLSs, and the related problems.

108/ MLS Survey Question H1 ("Is an MLS participating broker required to submit certain types of listings to the MLS for dissemination to other MLS participants?") compared to Question B7 ("Average length of time between the date a property was listed and sold. . .").

H1 (Mandatory)	B7 Time-on-Market Average
Yes (257 responses)	65 days

inappropriate for the buyer in terms such as size, location, layout, or price. However, steering may also occur for reasons having nothing to do with the attributes of the house. Cooperating brokers may preferentially show a high-priced property that offers them an unusually handsome split. They also may hold back from showing the exclusive listings of those brokers (often alternative or "discount" brokerage firms) who offer a less than attractive commission split.109/ In the steering process, the broker restricts the flow of information and thus reduces the consumer's access to the market, and transactions that might interest the consumer may never come to the consumer's attention.

Our Consumer and Alternative Broker Surveys suggest the possibility that steering practices may be widely prevalent.

Consumer Survey Seller Questions 49 asked: "Did the buyer use an agent?," and if the answer was in the affirmative, Question 52a followed up by asking "Was the agent the buyer used from the same firm as your agent or a different firm?" Combining the answers to these two questions, about 53 percent of the sellers indicated that the buyer used a broker from a different firm than the seller's broker, signifying that cooperative sales between two firms occurred in at least 53 percent of the transactions. Additionally, even a higher percentage of sales were done through the use of two salespersons or brokers, including those within the same firm (or in a different firm). Approximately two-thirds of transactions were found to be in this category.

The alternative brokers who use an MLS experience a very different level of cooperation. Alternative Brokers Question IV.D.3. indicated that only 29 percent of the alternative broker sales involve cooperation with another firm. The evidence also suggests that the homes being sold by the alternative brokers are slightly less expensive than those being sold by traditional brokers.110/ Price sensitive buyers, therefore, may likely be interested in the homes of alternative brokers. Yet the alternative broker cooperation rate is far less than the rate of the traditional brokers.

The smaller commission split generally offered by alternatives may explain much of this difference. As a matter of self-interest, brokers may tend to steer buyers toward the homes that involve a better commission split just as merchants may tend to promote the sale of those items which will bring them the largest returns. Because many buyers think they are seeing all the properties a broker or salesperson knows to be on the market, the practice of steering coupled to the general practice of denying consumers direct access to information from a MLS may mislead buyers.

Alternative brokers indicate they experience a consistent pattern of traditional brokers steering away from the alternative listings. Of MLS alternative brokers answering Survey Question V.7., 59 percent claimed to have experienced frequent refusals by other brokers to show their homes during their first year of operations. Fully 90 percent reported that they had experienced at least occasional refusals during their first year. Even after several years in

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109/ A reverse variation on steering takes place when a listing broker refuses to allow another broker to cooperate in the sale of a home, or offers a particular broker a discriminatory commission split to discourage cooperation while falsely maintaining in the seller's mind the notion that "the whole MLS" is being recruited to work on the listing.

110/ Alternative brokers reported that their selling price was, on average, 94% of the average selling price for all resales in their areas. Comparability of homes, however, could not be measured. Alternative Broker Survey, Question III.1. and I.V.D.5.

operation, 50 percent of the alternative firms said that they continued to experience frequent refusals.

In conclusion, brokers provide a number of the market-making services consumers want. However, there may be significant problems relating to the practices of self-dealing, vest-pocket listing, and steering, all of which practices involve restrictions on the flow of information to consumers.

b. Representation Function

Real estate brokers perform a representation function, consisting of advice help with negotiations, and help with meeting technicalities of all sorts. This function involves both providing information ("I suggest you offer this") and providing services ("I will meet with the seller's broker and try to get the seller to accept your price").

Many industry commentators have recognized a problem of ambiguous representation by brokers. These commentators often conclude that the present system involves inherent conflicts of interest that make it difficult for broker to remain totally faithful to their obligations as agents. At least one legal scholar has noted that "[a]mong the seller, the buyer, and the real estate broke there is a clear three-way conflict of interest."[111] Current practices can "easily lead to violations of the fiduciary duty owed by the broker to one or th other of the principals in the transaction."[112]

Many state and local government officials, in response to our invitati comment, also noted that the problems of broker representation are serious.[113]

To understand the representation function more clearly, we examined its tw principal aspects: the advisory function and the negotiation function.

(1) Advisory Function

Brokers provide and process market information to help consumers understan the transaction and make optimal decisions. Direct measurement of the quality o these services is difficult. However, several reasonable assumptions can be us to evaluate broker performance in this regard. First, a good advisor should he the consumer to understand a complex transaction. This involves helping educat the consumer about the process. Second, a good advisor should make clear the legal status of the various actors in the transaction, so the consumer can base decisions on an accurate knowledge of the participants' roles and responsibilities. Third, a good advisor should provide sound substantive advic about the purchase or sale, including information regarding both the advantages and defects of the home and of the prospective deal.

This third service function cannot be accurately measured by survey techniques. Nor do we have much direct evidence regarding brokers' provision o

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111/ Z. Gresham "The Residential Real Estate Transfer Process. Functional Critique," Emory Law Journal (1973), at 421, 43

112/ Miller & Starr, California Real Estates Sales Transactions 134 (1967).

113/ See Appendix B, Section 3.

the first two service functions. However, a number of other studies show that, for whatever reason, many consumers have little knowledge about the nature of the real estate transaction itself, at least with regard to real estate terms. These studies suggest that even relatively experienced participants in real estate transactions display a minimal level of learning about the transaction.114/ The FTC Consumer Survey data regarding consumer learning discussed in Section 2, above, further supports the conclusion that minimal learning takes place in current brokerage transactions.

In addition, the level of consumer unawareness about the role of the broker suggest that brokers were not a particularly good source of volunteered information that explained the roles of various participants. It is difficult for a consumer to make an intelligent sale or purchase decision without knowing the status of those who are advising him, especially if some of those advisors have adverse interests. Yet brokers do not effectively provide this information, at least according to our survey results on consumer's knowledge of the broker's role.115/

114/ A 1963 California Department of Real Estate Study of Consumer Knowledge surveyed consumers who had recently bought or sold homes using brokers. The study found that commonly-used terms such as "community property," "joint tenancy," "trust deed," "escrow," and "closing statement" were erroneously defined by 48% or more of the respondents in a test of the ability to define real estate terms. R. Connett and J. Sawatzby, The Public Image of a Real Estate Agent 9-10 (1963).

A 1975 study commissioned by the California Department of Real Estate and coordinated by Dr. B.E. Tsagris of California State University, Fullerton, updated the 1963 survey research. The 1975 study also used a quiz on basic real estate terminology to determine the levels of consumer knowledge and consumer learning. Based on the results of this questionnaire, Dr. Tsagris and his staff concluded that "buyers and sellers misunderstood the terminology used by real estate agent almost 40% of the time." B. Tsagris, The Public Image of a Real Estate Agent 5 (1975).

A 1976 study of Stanford Law Professor Bruce Owen and his associate Joseph Grundfest found similar widespread consumer ignorance of the brokerage transaction. That study concluded:

> The results [of our study] justify the conclusions that most real estate agents dealing with residential property will find that 40% of the sellers and buyers they come in contact with do not have any real comprehension of the vocabulary of real estate.

Owen & Grundfest, Licensing of Real Estate Brokers as Underwritten Title Insurance Agents, 118 (1976).

115/ See Sections 2.a(2) and 2.b(2) above.

(2) Negotiations

Helping the consumer negotiate has always been an important part of the broker's function.[116] Over 80 percent of both buyers and sellers in the FTC Consumer Survey agreed that the brokers involved in their transactions played a major role in negotiations.[117]

The Consumer Survey data indicates that consumers believe they are represented in these negotiations, and that they act in accord with this belief. Both sellers and buyers in the Consumer Survey believed they were "represented" in the process by their brokers: 78 percent of sellers and 66 percent of buyers indicated their brokers were representing them.[118] Both sellers and buyers relied heavily on their brokers' advice during all phases of the transaction: 75 percent of sellers and 67 percent buyers agreed that they "relied on [their] broker's advice a,great deal."[119]

The extent to which consumers take brokers into their confidence indicates the degree of consumer belief about representation and suggests a potential for harm. Both sellers and buyers generally tell their brokers the price beyond which they will not go in the deal: 79 percent of the sellers agreed that they "told [their] agent the lowest price [they] would accept;"[120] 73 percent of the buyers agreed that they "told [their] agent the highest price [they] would pay;"[121] 83 percent of buyers also agreed that they "felt that whatever [they] told [their] agent about how high [they were] willing to go for the house [they] bought would remain confidential."[122]

Buyers also were asked whether their brokers had "told [them] how low [the broker] thought the seller would go." Sixty-two percent of the buyers agreed that brokers had. Where there was only one broker in the transaction, that broker would have been the recipient of any "confidential disclosures" made b either party. Fifty-six percent of the buyers who had been parties to transactions involving only one broker reported that the broker had revealed to them what apparently was confidential information.[123]

The potential for abuse in any transaction involving fiduciaries is always great. Our evidence is only suggestive, of course, but it is important to recor that others who have studied the real estate brokerage industry have commented o possibly common violations of what may in law be considered to be the strict agency duties of a broker.[124]

116/ See, e.g., E. Fisher, Advanced Principles of Real Estate Practices 4 (1930).

117/ FTC Consumer Survey Exhibit, Buyer Question 53, Seller Question 60.

118/ Seller Question 53, Buyer Question 31.

119/ Seller Question 60, Buyer Question 53.

120/ Seller Question 60.

121/ Buyer Question 53.

122/ Id.

123/ See also Buyer cross-tab of Question 46 by Question 53.

124/ See, e.g., Gresham, supra, note 112; Miller and Starr, Current Law of California Real Estate (1975); Comments of

Two scholars of brokerage law summarized the listing broker's conflicts as follows:

> A common and recurring problem which involves the agent's duty of disclosure, his duty to pursue the best interests of his principal, and his responsibility to obtain the best possible price and terms for the principal's property, occurs when the seller's broker informs the buyer that the property probably can be obtained for less than the listed sales price. The problem, of course, is to draw a distinction between an act of bad faith and a valid exercise of the broker's authority to negotiate the transaction for his principal.125/

c. Conclusion

Brokers provide many market-making services that consumers desire. Without intending to be overly critical of the industry, we have felt it is important to also point out in this Report that those same brokers sometimes may engage either in practices that limit consumer information or fail to take much initiative to successfully provide consumers with appropriate facts. The conflicts of interest inherent in their agency relationship when combined with consumers' lack of awareness and unfamiliarity with what they should expect can produce an ambiguous situation that may result in consumers sometimes receiving representation which does not fully comport with their objective best interests.

4. Conclusion

The performance of the real estate brokerage industry, in helping consumers with the search for a broker and with the search for a home to buy or a buyer to whom to sell is somewhat mixed.

125/ Miller and Starr, supra, note 124, Section 4:16 at 48; see also D. Hempel, et al., Duration of Listing Period: An Empricial Study of Housing Market Dynamics, Univ. of Connecticut (1977), at 45, and Case, supra, note 57, Part 2, at 8-9. The conflict of interest problem and some causes both of conflicting interests and potential underrepresentation of consumers are explored in further detail in Chapter IV, Section F of this Report, "Broker/Consumer Relationship," below.

CHAPTER IV: ANALYSIS OF INDUSTRY STRUCTURES AND PRACTICES

A. TRADE ASSOCIATIONS

The National Association of Realtors (NAR) and its affiliated state Associations and local Boards of Realtors together comprise the principal trade organization in the real estate brokerage industry. In this section we first present introductory descriptions of the NAR and its affiliates, followed by brief introductions to the other smaller groups. Next we trace the history of the Realtor organizations and recurring themes in that history. Last we descrit and analyze the Realtor structures and practices which have been the subject of particular attention in our investigation.

1. Introductory Description of the Trade Associations [126/]

The Realtor system is a tripartite trade organization consisting of the National Association, 50 state Associations, and more than 1,800 local Boards oi Realtors.

a. National Association of Realtors (NAR) [127/]

The National Association of Realtors is the parent organization and nation component of the Realtors system. Founded in 1908 in its headquarters location Chicago, Illinois, the organization was known until 1972 as the National Association of Real Estate Boards (NAREB). Today, with more than 730,000 members, the NAR is the largest trade and professional association in the nation.[128/] Of NAR's current members, 85 percent are primarily engaged in residential brokerage, as opposed to commercial brokerage or other forms of practice.[129/] We have located no precise statistics on the Realtors' share of the real estate brokerage services market. However, data from the FTC Consumer and MLS Surveys suggests that an overwhelming percentage of all broker-assisted residential housing transactions in the U.S. involve a Realtor.[130/]

126/ This overview is drawn largely from Appendix C, "Trade Associations," which provides a detailed description of the principal trade associations in real estate brokerage. Appendix C should be reviewed for further detail and source references.

127/ *See* Appendix C, Section 1.

128/ NAR, *Operations Manual* (1978), at 1; NAR Monthly Report, Vital Statistics (May 1980), at 1.

129/ NAR, *1978 Annual Report*, at 2.