

# **Summary of Testimony for the Federal Trade Commission: Possible Anticompetitive Efforts to Restrict Competition on the Internet Workshop**

**Larry Theurer, CAI, GPPA  
President, National Auctioneers Association**

The National Auctioneers Association represents nearly 6,300 professional auctioneers from the United States and Canada. Founded in 1949, the association promotes the auction method of marketing and enhances the professionalism of its practitioners. NAA members adhere to a strict code of ethics that governs their professional relations and their relationships to bidders, buyers and the public.

Auctions are time-limited sales where the auctioneer solicits bids from a group of interested bidders, with the property going to the individual who has submitted the highest bid. The market determines the value of a particular piece of property. The estimated 35,000 professional auctioneers in the United States cover every niche market imaginable, from real estate to manufacturing equipment to intellectual property.

Internet auctions simply offer another medium in which to practice this traditional sales method. Using a computer, the seller solicits offers for an item in online market places, sales are limited in time, and the seller often sets a minimum, or reserve, price for the item.

The advent of the online auctions has increased public awareness of the auction method of marketing and transformed the industry itself. With millions of individual users and billions of dollars annually in transactions occurring through online auctions, many have learned about auctions through online auction sites. Traditional “brick and mortar” auctioneers have noted the success of these venues and embraced new technology; combining traditional and online auction methods to market sales, solicit bids and increase revenues. Additionally, the National Auctioneers Association has considered establishing a membership category for online auctioneers, called I-Auctioneers, in an effort to offer educational programs and have online auctioneers adhere to the association’s code of ethics.

While there is little difference in the way online and traditional auctions are conducted, there is a marked difference in the way traditional and online auctioneers are regulated. While “brick and mortar” auctioneers are regulated by states; the same laws, designed to protect consumers, are not applied to online auctioneers. The result of this lopsided application of governmental regulation has resulted in a high incidence of fraud through online auctions.

## **Regulation of the auction industry**

Currently, twenty-nine states have license laws for professional auctioneers. State licensure laws range from simple registration procedures to more exacting educational and bonding requirements. States that have more exacting standards require:

- An applicant be 18 years or older and possess a high school diploma or the equivalent;
- Applicants attend a course of study at an state licensing board certified auctioneer program or serve an apprenticeship of six months to two years;
- Applicants pass an examination of applicable state auctioneer licensing laws;
- Applicants pay the applicable licensing fees;
- Applicants complete continuing education courses;
- Applicants follow state standards for the conduct of a sale; and
- Applicants adhere to the state standards for advertising auctions.

Auctioneers frequently practice the trade in more than one state. Licensing boards frequently enter into reciprocity agreements with those states that have similar or more exacting standards for auctioneers. For example, the state of Virginia provides for the licensing of non-resident auctioneers from twelve states, including Alabama, Florida, Kentucky and Pennsylvania. Non-resident auctioneers from states without licensing laws are eligible for licensure if they meet the requirements of a licensing state.

States with licensure laws have also mandated a number of exceptions to licensing requirements. For this discussion the most notable exception is that which waives licensure for individuals who choose to sell property they own or that is not purchased expressly for resale.

Finally, state licensure laws are designed to offer a measure of protection to the consumer, both seller and bidder. Under state licensure laws, the seller is assured of a sale conducted professionally, a standard of professional behavior and payment in a prompt manner. The bidder can expect that an auction will be conducted in a fair manner and that the condition of property is advertised truthfully. Consumers with grievances can appeal to a state licensing board or to a state-appointed grievance committee. Many states have a recovery fund, funded by auctioneer licensing fees, that pay for damages when an auctioneer is found to be at fault. Individuals who violate a state's licensing laws risk disciplinary action from a licensing board or a revocation of their professional license.

## **Regulation of online auctions**

While "brick and mortar" auctioneers must often meet exacting regulatory standards, regulation of online auctions under existing state licensing laws is negligible.

To our knowledge, only two states require some form of licensure for online auctioneers. The state of New Hampshire has interpreted its licensure laws to include those state residents who conduct online auctions. New Hampshire requires those individuals to complete a course of study or an apprenticeship, pass a state examination, hold a \$10,000 bond, and pay an annual \$85 fee.

The governor of Illinois recently signed a bill that would require the registration of online auction web sites, of which the state estimates there are 2,300. In an interesting twist, online auction company eBay participated in the drafting of the bill. The state of Illinois is currently writing administrative rules for this new law.<sup>1</sup>

Two states have attempted, but abandoned attempts, to regulate online auctions. The North Carolina Auctioneer Licensing Board interpreted its licensing laws to include online auctions. However, it declined to recommend enforcement of those rules in regard to online auctions after public outcry. The state of Tennessee attempted to amend its licensure laws to include regulation of online auctions, but abandoned those efforts after reviewing public comment.

### **Online auctions and fraud**

Lax governmental oversight and the insistence on self-regulation among online auction companies led to high incidences of theft and fraud through online auction markets.

Fraud has become nearly constant complaint among those individuals who frequent online auction marketplaces. According to a survey conducted by the National Consumer League, 41 percent of on-line auction users have reported problems with their transactions. Items delivered late, damaged, different than advertised or unshipped after payment were the most common complaints.<sup>2</sup>

Recent news stories underscore the frequency of online auction fraud. According to an Associated Press story on Sept. 11, 2002, a California woman pleaded guilty to defrauding 50 online bidders of \$150,000.<sup>3</sup> Law enforcement agencies also report an alarming trend of teenagers committing fraud online. Among the most common methods of fraud among teenagers was through online auctions.<sup>4</sup>

Beyond anecdotal evidence, the National Consumer League's Internet Fraud Watch reports online auction fraud complaints have decreased. However, the average amount of money lost per transaction has increased. In 2001, 70 percent of online fraud complaints involved online auctions, while 78 percent reported problems with online auctions in 2000. In 2001 the average amount lost in online auction fraud was \$411, a 26 percent increase from 2000.<sup>5</sup> The Internet Fraud Complaint Center, a joint venture of the Federal Bureau of Investigation and the National White Collar Crime Center, reports that 42.8 percent of the 16,775 complaints referred to law enforcement agencies were related to on-line auctions in 2001. The average amount lost in these cases was \$395.<sup>6</sup>

### **Analysis**

Given the apparent frequency of online auction fraud and the lax governmental oversight of online auctioneers, the National Auctioneers Association (NAA) recommends states license and regulate online auctions and auctioneers under modified forms of existing state law.

The differences between online auctions and traditional auctioneers are minimal. The only significant difference between the two is the choice of medium.

The NAA believes the lack of regulatory oversight of online auctioneers constitutes an unfair advantage over traditional “brick and mortar” auctioneers. At a minimum, state-licensed auctioneers must demonstrate their knowledge of applicable state laws; contribute to recovery funds or hold a bond; pay applicable licensing fees; and adhere to professional standards set by law. In contrast, online auctioneers do not currently have to meet this burden of demonstrating their knowledge of regulation, nor do they have to adhere to a standard of conduct.

However, the states’ regulation of the auction industry is not overly burdensome. As written, state regulations accomplish two goals. First, the statutes outline the professional responsibilities and duties for an auctioneer. Second, these regulations protect the consumer, both bidder and seller. The majority of license law applicants must first undergo a criminal background check, and individuals convicted of felonies are barred from conducting auctions. Licensing laws also mandate auctioneers meet minimal educational requirements (high school diploma or equivalent) and age requirements. Consumers with grievances against an auctioneer can seek restitution from a states’ recovery fund or have their losses applied against an auctioneer’s bond.

It is our belief that those individuals who conduct auctions on the Internet should be licensed in the state in which they reside. This would include those individuals who conduct such sales on consignment, who purchase property expressly for resale through such venues, or businesses that offer merchandise for sale through online auctions.

Current licensing laws should be interpreted to include online auctions. But, they should be interpreted so as not to place an undue burden on online auctioneers, and in some cases modified to better suit this new medium. Some requirements—knowledge of bid calling practices and course of study at an accredited auction program or apprenticeship—are simply not practical for online auctioneers. Waiver of these requirements or additional legislation would lessen any undue restrictions on online auctioneers.

Most on-line auctions deal with multiple state jurisdictions, (i. e. the auction company may be located in one state, the seller in another and the buyer in still a third state). The Federal Trade Commission should formulate a plan to provide consumer protection for these interstate transactions.

Congress addressed a similar problem involving interstate activities in 1978 with the passage of Public Law 95-109, the Fair Debt Collection Practices Act (FDCPA). While some states regulated and in fact, licensed third-party debt collectors prior to 1978, the problem arose as a result of the interstate activities of the debt collectors. A debt collector in California might well be using the mail and telephone to collect debts in Maine or any other state.

Realizing that consumers were having a difficult time protecting themselves from unscrupulous debt collectors because of the interstate aspect, Congress passed the FDCPA and gave the Federal Trade Commission certain enforcement powers. The FTC, through its use of these enforcement powers, has been extremely successful in curbing debt collection abuses.

Therefore, NAA suggests the FTC use all of its existing powers to regulate online auctions, or if the agency feels it does not have the authority to deal with such abuses, that it seek legislation, along the lines of the FDCPA, giving it those powers.

## **Conclusion**

Online auctions face regulation under few of the existing states' regulatory statutes governing the auction industry. As a result, they face few of the restrictions that traditional auctioneers face, and the lack of regulation shows in the large number of reported cases of fraud. Consumers lose without some regulatory protection in place for online auctioneers as well. Traditional auctioneers, many of them members of the National Auctioneers Association, also lose. "Brick and mortar" auctioneers must meet a standard of conduct and meet consumer protection safeguards that are simply not expected of their Internet counterparts. This uneven application of auctioneer licensing law gives online auction companies an unfair advantage in a very competitive marketplace. But far from being an undue burden on the auction industry, the National Auctioneers Association feels these statutes set the standard for professional behavior for auctioneers.

At the very least, on-line auctioneers operating in those 29 states that license traditional auctioneers should be subject to the same licensing requirements. Regulating online auctioneers would guarantee industry professionalism, protect consumers and ensure fair competition between online and traditional auctioneers.

Additionally, the Federal Trade Commission should apply existing interstate commerce law, like that of the Fair Debt Collection Practices Act, to regulate online auction companies. Regulation of other industries involved in interstate commerce have been successful in ensuring consumers are protected. If the FTC feels existing regulations governing interstate commerce are not applicable, the agency should draft and seek Congressional approval of legislation giving the FTC regulatory power over online auctions.

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<sup>1</sup> Associated Press, "Online auction companies will have to register with the state of Illinois," August 20, 2002, <<http://www.newsfinder.com>>

<sup>2</sup> National Consumer League, *Online Auction Survey Summary*, January 31, 2001, <<http://www.nclnet.org/onlineauctions/auctionsurvey2001.htm>>

<sup>3</sup> Associated Press, "News briefs from Southern California," September 11, 2002, <<http://www.newsfinder.com>>

<sup>4</sup> Chelsea J. Carter "Teens running Internet scams on the rise, law enforcement agencies report," February 17, 2002, <<http://www.newsfinder.com>>

<sup>5</sup> National Consumer League Internet Fraud Watch, *2001 Internet Fraud Statistics*, <<http://www.fraud.org/internet/2001stats.htm>>

<sup>6</sup> Internet Fraud Complaint Center, *The Internet Fraud Complaint Center 2001 Internet Fraud Report: January 1, 2001-December 31, 2001*, April 2002, <[http://www1.ifccfbi.gov/strategy/IFCC\\_2001\\_AnnualReport.pdf](http://www1.ifccfbi.gov/strategy/IFCC_2001_AnnualReport.pdf)>