Statement of the Federal Trade Commission

In the Matter of Music Teachers National Association, Inc., File No. 131-0118
In the Matter of California Association of Legal Support Professionals, File No. 131-0205
December 16, 2013

The Federal Trade Commission is today issuing for public comment proposed consent orders with two professional associations, the Music Teachers National Association, Inc. ("MTNA") and California Association of Legal Support Professionals ("CALSPro").[1] We take this step because we have reason to believe that these professional associations and their respective members have violated the antitrust laws by agreeing not to engage in fundamental forms of competitive activity.

MTNA, the umbrella organization for about 500 state and local music teacher associations across the country, is a professional association of over 20,000 private music teachers. Collectively, MTNA members generate an estimated $500 million in annual revenues. In 2004, MTNA revised its code of ethics and imposed a ban on solicitations, prohibiting teachers from actively recruiting students from one another. A number of MTNA affiliates have adopted even more aggressive competitive restrictions, including prohibitions on certain advertising, charging less than the community average, and offering scholarships or free music lessons. CALSPro, a California association of legal support service providers, is comprised of more than 350 company and individual members. CALSPro's code of ethics prohibits its members from offering discounted rates to rivals' clients, engaging in certain comparative advertising, and recruiting employees of competitors without first notifying the competitor.

Professional associations like MTNA and CALSPro typically serve many important and procompetitive functions, including adopting rules governing the conduct of their members that benefit competition and consumers. But, because trade organizations are by their nature collaborations among competitors, the Commission and courts have long been concerned with anticompetitive restraints imposed by such organizations under the guise of codes of ethical conduct.[2]

Competing for customers, cutting prices, and recruiting employees are hallmarks of vigorous competition. Agreements among competitors not to engage in these activities injure consumers by increasing prices and reducing quality and choice. Absent a procompetitive justification, these types of restrictions on competition are precisely the kind of unreasonable

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[1] Both MTNA and CALSPro are non-profits but it is well established that the Commission has jurisdiction over non-profit organizations that confer, or are organized for the purpose of conferring, economic benefits to their for-profit members. *See Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 767 n.6 (1999).

[2] *See, e.g.*, *Inst. of Store Planners*, 135 F.T.C. 793 (2003) (challenging restraints on price competition); *Nat'l Acad. of Arbitrators*, 135 F.T.C. 1 (2003) (restraints on solicitation and advertising); *Am. Inst. for Conservation of Historic & Artistic Works*, 134 F.T.C. 606 (2002) (restraints on price competition); *Cmty. Ass'ns Inst.*, 117 F.T.C. 787 (1994) (restraints on solicitation); *Nat'l Soc'y of Prof'l Eng'rs*, 116 F.T.C. 787 (1993) (restraints on advertising); *Nat'l Ass'n of Social Workers*, 116 F.T.C. 140 (1993) (restraints on solicitation and advertising); *Am. Psychological Ass'n*, 115 F.T.C. 993 (1992) (same).

restraints of trade that the Sherman Act was designed to combat. *See, e.g., Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679 (1978) (condemning ethics restriction on competitive bidding). For a professional association to proscribe honest competition as "unethical" behavior is particularly problematic because, as the Supreme Court has recognized, association members can be "expected to comply in order to assure that they [do] not discredit themselves by departing from professional norms." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792-93 (1975). Here, neither association advanced a legitimate business rationale for its restrictions. We therefore conclude that the principal tendency and likely effect of the challenged restraints is to harm consumers through higher prices, lower quality, and less choice.

Our proposed remedies will restore competition without imposing an undue burden on the parties or interfering with the legitimate functions of either organization. We have required MTNA and CALSPro to modify their codes of ethics and to cease any efforts to impede members of these associations from freely competing with one another. The MTNA order also requires the association to take affirmative steps to discourage anticompetitive conduct on the part of its state and local affiliates.

As with all of the Commission's enforcement activity, our goal in these cases is to stop the anticompetitive conduct at issue and remedy any anticompetitive effects associated with the challenged behavior. We also seek to provide guidance more broadly and deter other professional and trade organizations from imposing unjustified limits on competition. Maintaining a competitive marketplace requires that we monitor behavior among rivals and take action whenever we see competition being compromised to the detriment of consumers.