

Analysis to Aid Public Comment
In the Matter of California Association of Legal Support Professionals, File No. 1310205

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the California Association of Legal Support Professionals (hereinafter “CALSPRO”). The Commission’s complaint (“Complaint”) alleges that CALSPRO, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining provisions in its Code of Ethics that restrain its members from competing on price, advertising, and soliciting legal support professionals for employment.

Under the terms of the proposed Consent Agreement, CALSPRO is required to cease and desist from restricting its members from competing on price, advertising, and soliciting legal support professionals for employment.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“the Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by CALSPRO that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

CALSPRO is a non-profit professional association of over 350 company and individual members. CALSPRO’s members are in the business of providing support services to the legal community, including but not limited to serving process, copying documents, filing documents with a court, preparing subpoenas, searching court records, locating persons, and conducting private investigations.

CALSPRO maintains a Code of Ethics applicable to the commercial activities of its members. CALSPRO's members agree to abide by the Code of Ethics as a condition of membership. CALSPRO maintains the following provisions in its Code of Ethics:

- “It is not ethical to cut the rates you normally and customarily charge when soliciting business from a member firm’s client ...”
- “It is not ethical to ... speak disparagingly of another member.”
- “Never discuss the bad points of your competitor.”
- “It is unethical to contact an employee of another member firm to offer him employment with your firm without first advising the member of your intent.”

B. The Anticompetitive Conduct

The Complaint alleges that CALSPRO has violated Section 5 of the Federal Trade Commission Act by restraining through its Code of Ethics the ability of its members to compete on price, to solicit legal support professionals for employment, and to advertise. CALSPRO also established a Dispute Resolution Committee to uphold and maintain industry standards and ethical business practices as set forth in Respondent's Bylaws, Code of Ethics and Manual of Policies and Procedures. The Dispute Resolution Committee provides an avenue for resolving alleged violations of the Code of Ethics, including by encouraging CALSPRO's members to resolve privately disputes arising out of the Code of Ethics, and also by establishing a mechanism by which Respondent may sanction violations of the Code of Ethics.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of CALSPRO has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among legal support professionals, and by depriving consumers and others of the benefits of free and open competition among legal support professionals.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires CALSPRO to cease and desist from restraining its members from engaging in price competition, solicitation of employees, or advertising. The Proposed Order does not prohibit CALSPRO from adopting and enforcing reasonable restraints with respect to representations that CALSPRO reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

Paragraph III of the Proposed Order requires CALSPRO to remove from its website and organization documents any statement inconsistent with the Proposed Order. CALSPRO must publish an announcement that it has changed its Code of Ethics, and a statement describing the Consent Agreement (“the Settlement Statement”). CALSPRO must distribute the Settlement Statement to CALSPRO's board of directors, officers, employees, and members. Paragraph III

also requires CALSPro to provide all new members and all members who receive a membership renewal notice with a copy of the Settlement Statement.

Paragraph IV of the Proposed Order requires CALSPro to design, maintain, and operate an antitrust compliance program. CALSPro will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, CALSPro will have to provide in-person annual training to its board of directors, officers, and employees, and conduct a presentation at its annual conference that summarizes CALSPro's obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. CALSPro must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order impose certain standard reporting and compliance requirements on CALSPro.

The Proposed Order will expire in 20 years.

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