

Analysis to Aid Public Comment
In the Matter of Music Teachers National Association, Inc., File No. 131-0118

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the Music Teachers National Association, Inc. (hereinafter “MTNA”). The Commission’s complaint (“Complaint”) alleges that MTNA, 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 a provision in its Code of Ethics that restrains solicitation of teaching work.

Under the terms of the proposed Consent Agreement, MTNA is required to cease and desist from restricting solicitation among its members, and is required to disaffiliate any music teachers association that adopts or maintains provisions in its code of ethics or similar documents that restrain solicitation, advertising, or price-related competition.

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 MTNA 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

MTNA is a non-profit professional association of more than 20,000 music teachers. Many of MTNA’s members provide music-teaching services for a fee, or are employed at schools, universities and music studios as music teachers. Respondent has over 500 state and local music teachers associations as affiliates, including one affiliate for each state. Members of MTNA affiliates are also members of MTNA.

MTNA maintains a Code of Ethics applicable to the commercial activities of its members, and encourages its members to follow its Code of Ethics. In 2004, MTNA added the following non-solicitation provision to the section of its Code of Ethics titled “Commitment to Colleagues”:

The teacher shall respect the integrity of other teachers’ studios and shall not actively recruit students from another studio.

Some MTNA affiliates have the same Code of Ethics that MTNA has, and some have adopted different codes of ethics. Leaders of several state affiliates have exhorted MTNA members to comply with the non-solicitation restraints.

B. The Anticompetitive Conduct

The Complaint alleges that MTNA has violated Section 5 of the Federal Trade Commission Act by restraining through the non-solicitation provision of its Code of Ethics the ability of its members to solicit the clients of competing music teachers. MTNA also established a process for resolving alleged violations of the Code of Ethics, including by encouraging its members to resolve privately disputes arising out of the Code of Ethics, and by establishing a mechanism by which MTNA 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 MTNA has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among music teachers.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires MTNA to cease and desist from restraining or declaring unethical the solicitation of teaching work by its members. It also requires MTNA to cease and desist from maintaining a relationship with an affiliate that MTNA knows engages in conduct that restrains solicitation, advertising, or price-related competition by its members.

The Proposed Order does not prohibit MTNA from adopting and enforcing, or maintaining an affiliate relationship with an affiliate that adopts and enforces, reasonable principles (i) to prevent false or deceptive representations, or (ii) to govern the conduct of judges during music competitions sponsored or held by MTNA or its affiliates. The conduct of judges is exempt from the Proposed Order because MTNA has a valid justification for prohibiting solicitation in competitions. MTNA is concerned that if judges could solicit the students they are judging, it could give judges an unfair advantage over other MTNA members, and could adversely affect the integrity of competitions. This exemption is limited to the duration of a competition; prohibitions on pre or post-competition solicitation would violate the Proposed Order.

Paragraph III of the Proposed Order requires MTNA to remove from its organization documents and website any statement inconsistent with the Proposed Order. MTNA also must publicize to MTNA’s members, new members, affiliates, new affiliates, leaders, employees, and

the public the changes that MTNA must make to the Code of Ethics and a statement describing the Consent Agreement.

Paragraph III also requires MTNA to notify each of its affiliates that, as a condition of continued affiliation with MTNA, each affiliate must execute and return to MTNA a Certification that the affiliate does not have restrictions on student or job solicitations, advertising, or price-related competition. For example, the Certification, which is Appendix A to the Proposed Order, specifies that an affiliate does not restrict its members from publishing criticisms of other teachers, advertising free scholarships or tuition, or charging fees that are lower than the average fees in their community.

MTNA must disaffiliate any affiliate that does not provide an executed Certification within one hundred and twenty days of when MTNA gave notice to the affiliate. However, MTNA may allow an affiliate to execute an Extension of Time to avoid disaffiliation if the affiliate is not able to execute the Certification within the time allowed due to scheduling of its annual membership meetings or constitution or bylaw requirements. Thereafter, the Proposed Order requires MTNA to terminate an affiliate for one year after learning that the affiliate has restrained or declared unethical solicitation, advertising, or price-related competition, unless the affiliate informs MTNA that the affiliate has eliminated and will not reengage in such practices.

Paragraph IV of the Proposed Order requires MTNA to design, maintain, and operate an antitrust compliance program. MTNA will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, MTNA will have to provide in-person annual training to its leaders and employees, conduct a presentation at its annual meeting and to the presidents of the state affiliates, and provide an antitrust compliance guide to affiliates to use at their annual meeting concerning the antitrust laws and MTNA's obligations under the Proposed Order. MTNA 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 MTNA.

The Proposed Order will expire in 20 years.

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