

**Analysis to Aid Public Comment**  
***In the Matter of the National Association of Teachers of Singing, Inc.***  
***File No. 131 0127***

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the National Association of Teachers of Singing, Inc. (hereinafter “NATS”). The Commission’s complaint (“Complaint”) alleges that NATS, 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, NATS is required to cease and desist from restricting solicitation among its members, and is required to disaffiliate any Chapter 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 NATS 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**

NATS is a non-profit professional association of more than 7,300 singing teachers. Many of NATS’s members provide music-teaching services for a fee. Some also are employed at schools, universities and music studios as music teachers. NATS membership provides pecuniary benefits to its members.

NATS has affiliated state and local chapters, which are grouped into 14 regions. Members of Chapters also are members of NATS.

NATS maintains a Code of Ethics applicable to the commercial activities of its members, and requires its members to read and pledge adherence to all the provisions of the Code of Ethics. The NATS Bylaws require that Chapters shall abide by Association Bylaws, policies and guidelines, and will establish their own Bylaws and operating procedures

consistent with the NATS Bylaws and with review and consent of the NATS Board of Directors.

The NATS Code of Ethics has three sections. One of those sections is titled “Ethical Standards Relating to Colleagues.” That Section of the Code of Ethics includes a provision that states, “Members will not, either by inducements, innuendos, or other acts, proselytize students of other teachers.”

Some NATS Chapters have the same Code of Ethics that NATS has. Some Chapters have codes of ethics that contain other restrictions on solicitation, restrictions on price competition, restrictions on advertising free tuition, or restrictions on accepting pupils who have not fulfilled a financial obligation to another member until those obligations are satisfied.

### **B. The Anticompetitive Conduct**

The Complaint alleges that NATS violated Section 5 of the Federal Trade Commission Act by restraining competition among singing teachers through adoption and enforcement of the non-solicitation provision of its Code of Ethics. This is in effect an agreement among competitors not to compete. NATS requires members to agree to abide by the non-solicitation provision. NATS adopted a complaint and enforcement procedure for the Code of Ethics that can result in termination of membership. When NATS members have complained that other members violated the non-solicitation provision of the Code of Ethics, NATS has investigated complaints, and even where no formal action is taken, the NATS Ethics Committee, Executive Director, President, and Regions sometimes contact a teacher to secure compliance with the non-solicitation provision of the Code of Ethics, or mediate between parties in order to resolve complaints.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of NATS 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 I contains definitions for terms used in the Order.

Paragraph II requires NATS to cease and desist from restraining or declaring unethical the solicitation of teaching work. It also requires NATS to cease and desist from maintaining a relationship with any NATS Chapter that NATS learns or learns that, or obtains information that would lead a reasonable person to conclude that, engages in conduct that restrains solicitation, advertising, or price-related competition by its members.

The Proposed Order does not prohibit NATS from adopting and enforcing reasonable principles (i) to prevent false or deceptive representations, or (ii) to govern the conduct of judges during singing competitions sponsored or held by NATS or its Chapters, or maintaining a relationship with a Chapter that adopts and enforces such principles. The Proposed Order does not prohibit restrictions on judges’ solicitation during competitions because NATS could have a plausible efficiency rationale: ensuring fair competitions. The Proposed Order’s exemption is limited to restrictions on judges’ behavior during competitions; prohibitions on judges’ pre- or post-competition solicitation would violate the Proposed Order.

Paragraph III requires NATS to remove from its organization documents and website any statement inconsistent with the Proposed Order, including the Code of Ethics restriction on solicitation. NATS also must publicize to its members, new members, Chapters, new Chapters, leaders, employees, and the public the changes NATS must make to the Code of Ethics, and a statement describing the Consent Agreement.

Paragraph III also requires NATS to notify each of its Chapters that, as a condition of remaining a NATS Chapter, each Chapter must execute and return a Certification to NATS that the Chapter does not have restrictions on solicitation, advertising, or price-related competition. NATS must terminate any Chapter that does not provide an executed Certification within one hundred and twenty days of when NATS gave notice to the Chapter. Thereafter, if NATS learns that a Chapter has engaged in restraining or declaring unethical the solicitation, advertising, or price-related competition, the Proposed Order requires NATS to terminate the Chapter for one year unless the Chapter informs NATS that the Chapter has eliminated and will not reengage in such practices.

Paragraph IV requires NATS to design, maintain, and operate an antitrust compliance program. NATS must appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, NATS must provide guidance to its staff, employees, members, leaders, and Chapters concerning the antitrust laws and NATS' obligations under the Proposed Order. NATS also must 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 requires certain standard compliance reporting, cooperation, and access.

The Proposed Order will expire in 20 years

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