

Analysis to Aid Public Comment
In the Matter of Professional Lighting and Sign Management
Companies of America, Inc., File No. 141 0088

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the Professional Lighting and Sign Management Companies of America, Inc. (“PLASMA”). The Commission’s complaint (“Complaint”) alleges that PLASMA, 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 Bylaws and Standard Operating Procedures that restrict members from competing in the territory of another member, that restrict price competition, and that restrict members from soliciting the customers of another member upon termination of membership in the association.

Under the terms of the proposed Consent Agreement, PLASMA is required to cease and desist from allocating territories, restraining price competition among its members, and restraining its members from soliciting customers. It is also required to maintain an antitrust compliance program and take other steps to further the remedial objectives of the proposed order.

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 PLASMA 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

PLASMA is a non-profit corporation consisting of licensed electricians, with approximately 25 member firms across the country. PLASMA's members specialize in commercial lighting and electrical sign installation and maintenance.

B. The Anticompetitive Conduct

PLASMA maintains a set of Member Bylaws and Standard Operating Procedures ("Bylaws") applicable to the commercial activities of its members, and requires its members to comply with its Bylaws. PLASMA maintains the following provisions in its Bylaws:

- A provision that prohibits a member from providing to a customer commercial lighting or sign services in the designated territory of another member, unless such other member first declines to perform the work;
- A price schedule governing the price of any such work performed in the designated territory of another member; and
- A provision that bars any member, for one year following termination of membership, from soliciting or competing for the customers (or prospective customers) of another member.

PLASMA also established a grievance committee to resolve alleged violations of the Bylaws, as well as a process through which PLASMA could sanction violations of the Bylaws.

II. The Allegations

The Complaint alleges that PLASMA has violated Section 5 of the Federal Trade Commission Act by designating a territory for each member, and by restricting through its Bylaws the ability of members to compete in the designated territory of another member; to compete on price; and to solicit or compete for the customers of other members.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of PLASMA has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among licensed electricians.

III. The Proposed Order

The Proposed Order has the following substantive provisions: Paragraph II requires PLASMA to cease and desist from restraining its members from competing in the territories of other members; from restraining price competition among members; and from restraining members from soliciting the customers of other members upon the termination of membership in the association. The Proposed Order does not prohibit PLASMA from requesting that its members identify any geographic region(s) within which such members can quickly respond for service. However, PLASMA may not place restrictions on the number of members that may identify a particular geographic region as a "quick response" region.

Paragraph III of the Proposed Order requires PLASMA to remove from its website and organization documents any statement inconsistent with the Proposed Order. PLASMA must distribute a statement describing the Consent Agreement (“the Settlement Statement”) to PLASMA’s board of directors, officers, employees, and members. Paragraph III also requires PLASMA 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 PLASMA to design, maintain, and operate an antitrust compliance program. PLASMA will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of three years, PLASMA will have to provide annual training to its board of directors, offices, and employees, and conduct a presentation at its annual conference that summarizes PLASMA’s obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. PLASMA 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 members for failure to comply with the Proposed Order.

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

The Proposed Order will expire in 20 years.

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