

Analysis to Aid Public Comment
In the Matter of National Association of Animal Breeders, Inc.
File No. 141 0215

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the National Association of Animal Breeders, Inc. (hereinafter “NAAB”). The Commission’s complaint (“Complaint”) alleges that NAAB, 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. NAAB restrained competition by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) naming competitors in printed materials that contain certain information about the competitors, and (2) disclosing or publicizing prices of bulls purchased or sold.

Under the terms of the proposed Consent Agreement, NAAB is required to cease and desist from restraining its members from (1) naming members or other competitors when making statements comparing the products and services of a member with the products and services of any other member or competitor, and (2) publicizing or disclosing price information relating to the purchase or sale of animals.

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 NAAB 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

NAAB is a non-profit corporation of animal breeders, with about twenty-four regular members, and about twenty-seven non-voting associate members. Many of NAAB’s members are organizations in the business of collecting, processing, marketing and selling dairy and beef

cattle semen for artificial insemination (“AI”). Members include small, family-owned breeding operations, cooperatives, and multinational corporations.

B. The Anticompetitive Conduct

NAAB maintains a Code of Ethics applicable to the commercial activities of its members. NAAB’s bylaws require that members comply with the Code of Ethics. NAAB maintains the following provisions in its Code of Ethics:

- “Member competitors will not be named in printed material comparing averages between members.”
- “The purchase price of sires, purchased at private treaty, by NAAB members shall not be disclosed by the Buyer, and the Seller shall be requested not to quote the selling price. Also, prices of bulls purchased at public auction by AI organizations shall not be quoted in their printed statements, advertising, and/or publicity material.”

NAAB also established a process for receiving complaints about and resolving alleged violations of the Code of Ethics, including by allowing its members to resolve privately disputes arising out of the Code of Ethics, and also by establishing a mechanism by which NAAB may sanction violations of the Code of Ethics.

The Complaint alleges that NAAB has violated Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) making advertisements comparing AI organizations, and (2) disclosing truthful and non-deceptive information. The Complaint alleges that the purpose, effects, tendency, or capacity of the combination, agreement, acts and practices of NAAB has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among AI organizations, and by depriving consumers and others of the benefits of free and open competition among AI organizations.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires NAAB to cease and desist from restraining its members from (1) naming members or other competitors when making statements comparing the products and services of a member with the products and services of any other member or competitor, and (2) publicizing or disclosing price information relating to the purchase or sale of animals. The Proposed Order does not prohibit NAAB from adopting and enforcing reasonable restraints with respect to representations that NAAB 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 NAAB to remove from its website and organization documents any statement that does not comply with the Proposed Order, and to publish on the website any revision to the organization documents. NAAB must publish an

announcement that it has changed its Code of Ethics, and a statement describing the Consent Agreement (“the Settlement Statement”). NAAB must distribute the Settlement Statement to NAAB’s board of directors, officers, employees, and members. Paragraph III also requires NAAB 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 NAAB to design, maintain, and operate an antitrust compliance program. NAAB will have to appoint Antitrust Counsel for the duration of the Proposed Order. For a period of five years, NAAB will have to provide in-person annual training to its board of directors, officers, and employees, and conduct a presentation at its annual convention that summarizes NAAB’s obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. NAAB 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 board of directors, officers, employees, members, 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 NAAB.

The Proposed Order will expire in 20 years.

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