

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:           Maureen K. Ohlhausen, Acting Chairman  
                                  Terrell McSweeney**

In the Matter of	)	
	)	
	)	
Louisiana Real Estate Appraisers Board,	)	Docket No. 9374
Respondent	)	
	)	

**ORDER SEEKING SUPPLEMENTAL BRIEFING, SCHEDULING ORAL ARGUMENT,  
EXTENDING DEADLINE FOR COMMISSION RULING, AND RESCHEDULING  
COMMENCEMENT OF EVIDENTIARY HEARING**

On February 5, 2018, Complaint Counsel filed a Motion for Partial Summary Decision Dismissing Respondent’s Fourth Affirmative Defense. That defense avers: “Louisiana Real Estate Appraisers Board has acted in good faith to comply with a federal regulatory mandate.” Complaint Counsel argue that the regulatory compliance defense is inapplicable to this proceeding and ask the Commission to rule that the Fourth Affirmative Defense is not a valid defense to the Complaint. Respondent has opposed Complaint Counsel’s Motion, and Complaint Counsel have filed a timely Reply in support thereof.

After a careful review of the parties’ submissions and the applicable case law, we have determined that supplemental briefing and entertaining oral argument on this Motion would be beneficial. Although both parties should be prepared to present oral argument addressing all issues raised by Complaint Counsel’s Motion, we instruct the parties to focus their supplemental briefing and presentations on the following questions:

1. How do the elements of the regulatory compliance defense differ from those applicable to implied immunity from the antitrust laws?
2. What are the consequences of successful application of the regulatory compliance defense? Does successful invocation of the defense universally bar antitrust liability or can it represent a factor to be considered as part of a rule of reason inquiry?
3. Do any differences between the facts in this proceeding and those in telecommunications litigation, where regulatory compliance considerations have received the most extensive treatment, suggest differences in the availability or application of a federal regulatory compliance defense?

4. How should the extant regulatory compliance case law be read in conjunction with more recent Supreme Court authority establishing the requirements of the state action defense? Can these two strands of case law be successfully harmonized, or are they in conflict today?

5. How would a defense based on “compliance in good faith with . . . state regulation” (Memorandum of Respondent Louisiana Real Estate Appraisers Board in Opposition to Complaint Counsel’s Motion for Partial Summary Decision on Respondent’s Fourth Affirmative Defense at 3) relate to the state action and preemption doctrines?

The Commission has determined to conduct the oral argument on August 13, 2018, at 2:00 p.m. in Hearing Room 532 of the Headquarters Building of the Federal Trade Commission, located at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Each side will have 30 minutes to present its argument. Complaint Counsel, as moving party, will have the opportunity to open the argument and may reserve time for rebuttal. The Commission’s deadline for ruling upon the Motion will be extended to September 10, 2018. *See* 16 C.F.R. §§ 3.22(a), 4.3(b). In view of this adjustment of the litigation schedule in this proceeding and the timing of evidentiary hearings already scheduled in other proceedings, the evidentiary hearing in this proceeding, currently set to begin on June 11, 2018, will be rescheduled to open on October 15, 2018. *See* 16 C.F.R. §§ 3.11(a)(4), 4.3(b). Accordingly,

**IT IS HEREBY ORDERED** that Complaint Counsel will submit a supplemental brief on the questions raised in this order by June 11, 2018. Respondent’s brief shall be submitted by June 25, 2018. Any reply brief shall be filed by July 2, 2018;

**IT IS FURTHER ORDERED** that the Commission will conduct oral argument regarding Complaint Counsel’s Motion for Partial Summary Decision Dismissing Respondent’s Fourth Affirmative Defense on August 13, 2018, as specified above;

**IT IS FURTHER ORDERED** that the Commission’s deadline for ruling on Complaint Counsel’s Motion for Partial Summary Decision Dismissing Respondent’s Fourth Affirmative Defense is extended to September 10, 2018; and

**IT IS FURTHER ORDERED** that the evidentiary hearing in this proceeding before an Administrative Law Judge of the Federal Trade Commission will commence on October 15, 2018, at 10:00 a.m.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

ISSUED: April 24, 2018