

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
Washington, DC 20580



Office of Policy Planning  
Bureau of Competition  
Bureau of Consumer Protection  
Bureau of Economics

May 26, 2006

The Honorable Noble E. Ellington  
Louisiana State Senate  
P.O Box 94183  
Baton Rouge, LA 70804

Dear Senator Ellington:

The staffs of the Federal Trade Commission's ("FTC" or "Commission") Office of Policy Planning, Bureau of Consumer Protection, Bureau of Economics, and Bureau of Competition<sup>1</sup> are pleased to respond to your request for comments on Louisiana Senate Bill 642 ("SB 642" or the "Bill"), which would "define more clearly the exact nature of the type of seller who must become licensed as an auctioneer." The FTC has considerable experience in analyzing both consumer protection and competition issues related to Internet auctions and online commerce.<sup>2</sup> Based on our experience, we believe that, if enacted, SB 642 will enhance consumer welfare by reducing barriers to entry in the provision of online auction and retail services and thereby expanding consumer

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<sup>1</sup> This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

<sup>2</sup> The FTC is the leading U.S. consumer protection agency and works with auction websites such as eBay and the states to combat fraud and related problems in Internet auctions. It provides help to buyers and sellers to navigate potential pitfalls of using the Internet and Internet auction sites. See ONGUARD ONLINE, <http://onguardonline.gov/auctions.html> and INTERNET AUCTIONS: A GUIDE FOR BUYERS AND SELLERS, <http://www.ftc.gov/bcp/conline/pubs/online/auctions.pdf>. Note that there are a number of Internet auction houses, including Yahoo!, Amazon and Ubid. The FTC's Bureau of Economics recently hosted a roundtable on the economics of Internet auctions. See Internet Auction roundtable Web site at <http://www.ftc.gov/be/workshops/internetauction/internetauction.htm>. The FTC also hosted a conference on the anti-competitive barriers to e-commerce. See E-commerce Workshop Web site at <http://www.ftc.gov/opp/ecommerce/anticompetitive/index.htm>.

choice. We also believe the Bill will not increase the risk of consumer harm from auction fraud.

### **The Proposed Legislation**

Current Louisiana law defines an auction as “[the sale by] competitive bid on any property.”<sup>3</sup> Based on its interpretation of this definition, the Louisiana Auctioneer’s Licensing Board (“LALB”) recently began to require online auction house Trading Assistants (“TAs”) to have either an auction business license or an auctioneer’s license to operate. A consumer delivers his or her merchandise to a TA, who then sells it through an online auction house in return for some compensation, typically a percentage of the final sales price, although compensation schemes vary. TAs include individuals helping with a few transactions a year, large businesses with bricks and mortar locations, and online auction drop-off stores.<sup>4</sup> It is our understanding that the LALB would require TAs to pay an annual license fee of \$300, buy a \$10,000 surety bond, and, if required, to obtain an auctioneer’s license, receive the necessary education, training, and continuing education.<sup>5</sup>

The Bill would change the definition of auction by adding qualifying language to the existing statutory definition:

“Auction” means the sale by competitive bid on any property which sale consists of a series of invitations for offers to purchase property made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable bid.<sup>6</sup>

It is our understanding that this proposed change would exempt from LALB’s licensing requirements businesses and individuals that offer property through online auction houses exclusively.<sup>7</sup>

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<sup>3</sup> 37 LA. REV. STAT. ANN. § 3103 (A) (3). “Auctioneer” means any person who, for another, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at an auction. *Id.* at § 3103 (A) (4).

<sup>4</sup> See John Hill, *Louisiana, eBay Bidding War of Words*, SHREVEPORT TIMES, Apr. 11, 2006, at <http://shreveporttimes.com/apps/pbcs.dll/article?AID=/20060411/NEWS01/604120313/-1/LEGISLATUR>.

<sup>5</sup> To be licensed as an auctioneer in Louisiana, the person must have completed “[a] series of studies at a school of auctioneering licensed or approved by the board” or “[a]n apprenticeship of one year working with and under an auctioneer duly licensed in the state of Louisiana.” 37 La.sec. 3113 (A) (4) (a-b). The approved schools are listed at <http://www.lalb.org/schools.htm>.

<sup>6</sup> SB 642 § 1.

<sup>7</sup> For example, sales via online auctions would be excluded from this definition because there is no auctioneer who makes “a series of invitations for offers.” This definition is similar to the definition used in Tennessee (62 Tenn. § 19-101 (2)). The Tennessee Attorney General recently wrote that the Tennessee Auctioneer Commission does not have authority over Internet auction drop-off stores. Further, one interpretation of the detailed opinion is that the Tennessee law does not cover Internet auction house

## Competitive Effects of Proposed Legislation

By clarifying who needs to be licensed as an auctioneer or auction business, SB 642 will exempt from licensing requirements businesses and individuals who facilitate the use of online auction houses. This change will remove a barrier to entry (recently erected by the LALB), increasing consumer choice and likely leading to lower prices for TA services and concomitantly greater availability of goods from Louisiana for buyers in Louisiana and elsewhere.

The current requirement that TAs obtain an auction business or auctioneer's license is likely to increase the price that TAs in Louisiana charge for their service. First, it is likely that TAs will pass on a portion of the increased costs that they must incur as a result of licensing requirements to consumers in the form of higher prices. Further, if the total licensing costs are significant, some TAs and others may stop providing online auction and retail services altogether. If the current LALB policy reduces the number of TAs, the price of those services is likely to rise, making both potential sellers and potential buyers worse off. The presence of fewer competitors may reduce competition on price and quality among TAs and increase market power for market participants.<sup>8</sup>

TAs provide a valuable service to those who want access to online markets, but prefer not to sell goods themselves through online auction houses.<sup>9</sup> Further, given their relative experience using online auction houses, TAs are likely to be able to sell goods more effectively than their clients, by, for example, choosing the best mode to sell a particular item.<sup>10</sup> Standard economic theory also suggests that businesses such as TAs

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Trading Assistants. See Tennessee Attorney General Opinion No. 06-053 (March 27, 2006), at <http://www.attorneygeneral.state.tn.us/op/2006/OP/OP53.pdf>.

<sup>8</sup> Standard economic reasoning suggests that free entry will allow the market price to fall to where the market demand is covered by the most efficient suppliers (see ROBERT PINDYCK & DANIEL RUBINFELD, MICROECONOMICS ch. 8 (5<sup>th</sup> ed. 2001)). A number of standard economic theories suggest that a small number of competitors or reduced geographic or differentiated product competition will lead to higher prices. See *id.* at ch. 12.

<sup>9</sup> A number of studies have found that high feedback scores are associated with higher revenue for sellers. On eBay, feedback can be given after each transaction. The feedback includes a positive, negative, or neutral rating and written comments. eBay tracks and publishes the aggregate feedback score where a positive is equal to 1, a negative to -1 and a neutral is 0. To the extent that sellers can choose TAs with higher feedback scores this may lead to higher returns than these sellers could have received selling directly on eBay. See, e.g., Paul Resnick *et al.*, *The Value of Reputation on eBay: A Controlled Experiment*, at <http://www.si.umich.edu/~presnick/papers/postcards/>. According to eBay, "To be included in the Trading Assistant Directory and have access to Trading Assistant marketing materials, you must have (1) sold at least 10 items in the last 90 days, (2) a feedback score of 100 or higher, (3) 97% positive feedback or higher, and (4) your eBay account must be in good standing." For further information see eBay, *Trading Assistant Program*, <http://pages.ebay.com/tahub/index.html>.

<sup>10</sup> eBay and other Internet auctions provide numerous methods and mechanisms for selling items. For example, on eBay, not only is there the standard auction format, but there are also fixed price options (also known as "Buy-It-Now"), Best-Offer options, eBay Stores and eBay Express, plus combinations of

that specialize in selling items on online auction houses will be able to achieve lower costs relative to infrequent sellers through the purchase of capital equipment and access to larger buying volumes.<sup>11</sup>

If TA services are more expensive, fewer goods and services will end up for sale in online auction houses. Online auction houses provide a national, or even international, market for products that may have only traded locally prior to the Internet.<sup>12</sup> By allowing bidders throughout the United States to bid on goods offered for sale in Louisiana, online auction houses may lead to large gains from trade to consumers in Louisiana and elsewhere.<sup>13</sup> Online auction houses allow items to be traded to the people who want the goods the most, irrespective of where those people live.<sup>14</sup> By decreasing Louisiana residents' use of online auctions houses, the LALB's policy is likely detrimental to sellers in Louisiana and, by reducing the supply of goods from Louisiana available through online auction houses, to buyers in Louisiana and elsewhere.

Further, to the extent that TAs place competitive pressure on established auctioneers, the current LALB policy may increase the price that some consumers pay for traditional auctioneers' services. In particular, this may occur if traditional auctioneers

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the above. Internet auction sellers also have options on the length of the auction, the minimum bid amount, whether to use a hidden reserve, and the amount of the hidden reserve. See Robert Zeithammer, *When is Auctioning Preferred to Posting a Fixed Selling Price*, at [http://gsbwww.uchicago.edu/fac/robert.zeithammer/research/auctioned\\_goods\\_sept\\_05.pdf](http://gsbwww.uchicago.edu/fac/robert.zeithammer/research/auctioned_goods_sept_05.pdf).

<sup>11</sup> For example, TAs are likely to own shipping equipment and purchase relatively large levels of shipping services.

<sup>12</sup> See, e.g., Christopher Adams *et al.*, *Vettes and Lemons on eBay* (finding that the average bidder is willing to travel 700 to 800 miles to purchase a used car), at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=880780](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=880780).

<sup>13</sup> For example, eBay, the leading online auction house, has 72 million active users, including one million TAs, participating in auctions valued at \$22 billion in 2005. See *eBay Unaudited Supplemental Operating Data* at [http://investor.ebay.com/downloads/fund\\_Metrics.pdf](http://investor.ebay.com/downloads/fund_Metrics.pdf). Further, it was recently estimated that eBay contributed \$6.5 billion annually to consumer welfare. Ravi Bapna *et al.*, *Consumer Surplus in Online Auctions*, at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=840264](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=840264). See also Bapna presentation at the Internet Auction Roundtable at <http://www.ftc.gov/be/workshops/internetauction/ravibapnaslides.pdf>. In Louisiana, eBay has 460 TAs and approximately 1,500 people making a full or part-time living from eBay.

<sup>14</sup> eBay's standard auction format allows bidders to bid "as if" they are attending a live auction without the need to actually attend and without having to bid as the auction progresses. This format gives sellers access to bidders in all parts of the country and in all time zones. eBay uses a "proxy bidding" system where the bidder enters the highest amount he or she is willing to pay and the system sets the price at the second highest proxy bid. William Vickrey won the Nobel Prize in Economics in part for the realization that bidders will behave in a similar manner in an eBay-style auction as they will in a standard live auction. The equivalence between sealed-bid second price auctions and "English" auctions has been independently discovered on a number of occasions. See David Lucking-Reiley, *Vickrey Auctions in Practice: From Nineteenth-Century Philately to Twenty-First-Century E-Commerce*, 14 J. ECON. PERSPECTIVES 183 (2000).

compete with TAs by offering online auction and retail services. Auctioneers or auction businesses that have already satisfied the licensing, insurance and education requirements can provide online auction and retail services without concern about competition from unlicensed TAs.

### **Consumer Protection Issues Related to Online Auction Houses**

FTC staff works with online auction houses and the states to reduce fraud associated with Internet auctions and to educate consumers on the risks associated with using Internet auctions.<sup>15</sup> The FTC also hosts the Consumer Sentinel database, which collects information on consumer complaints. Consumer Sentinel data show that fraud in Internet auctions is one of the largest sources of consumer complaints received by the FTC.<sup>16</sup>

We are not aware of any particular consumer protection problem with TAs in Louisiana, and it is unlikely that requiring TAs to become licensed auctioneers or licensed auction businesses will address the most serious fraud-driven consumer complaints associated with Internet auctions – that sellers fail to send the merchandise.<sup>17</sup>

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<sup>15</sup> The FTC has issued extensive education for both Internet auction sellers and buyers. Some of the tips the FTC offers buyers on how to avoid falling prey to Internet auction fraud include: (1) becoming familiar with the auction site and its protections for buyers; (2) before bidding, researching the seller and avoiding doing business with sellers who try to lure a buyer off the auction site with promises of a better deal; (3) being cautious about escrow or online payment services that are unknown or have no functioning contact information; (4) protecting privacy by not providing personal or financial information until ensuring the legitimacy of a seller or payment service; (5) saving all transaction information; and (6) contacting the FTC or state attorney general's office if problems cannot be resolved.

<sup>16</sup> However, Consumer Sentinel complaints are self-reported, and the volume of these complaints do not correlate to the actual frequency of consumer problems. In 2005 there were approximately 80,450 complaints received by the FTC regarding Internet auctions (<http://www.ftc.gov/opa/2006/01/topten.htm>). In comparison, there were approximately 1.9 billion items listed on eBay alone (see [http://investor.ebay.com/downloads/fund\\_Metrics.pdf](http://investor.ebay.com/downloads/fund_Metrics.pdf)). That is, there was an average of one complaint for every 23,000 items listed. For a discussion of this issue presented at the Internet Auction Roundtable see Keith Anderson, *Internet Auction Fraud: What can we learn from Consumer Sentinel data?*, at <http://www.ftc.gov/be/workshops/internetauction/keithandersonslides.pdf>. For more recent estimates of the frequency of problems on eBay see Chris Dellarocas & Chris Wood, *The Sound of Silence in Online Feedback: Estimating Trading Risks in the Presence of Reporting Bias*, at <http://clients.pixelloom.info/WISE2005/papers/161.pdf>.

<sup>17</sup> For a discussion of complaints from the FTC's Consumer Sentinel database see OnGuard Online Web site at <http://onguardonline.gov/auctions.html#fraud>. Other complaints about Internet auctions include: sellers who send something of lesser value than advertised; sellers who fail to deliver in a timely manner; sellers who fail to disclose all relevant information about a product or terms of the sale; bid siphoning; second chance offers, shill bidding and bid shielding. For 2005, Louisiana ranked 48 among the 50 states with approximately 80 total fraud complaints in the Consumer Sentinel per 100,000 people in the population. In 2005, Louisiana had 750 fraud complaints associated with Internet auctions in the Consumer Sentinel. This represents about 20% of all Louisiana fraud complaints in the database, which is slightly lower than the national average of about 25% (see Anderson presentation). The Consumer Sentinel collects consumer complaints from numerous sources and on numerous topics. For more information see Consumer Sentinel Web site at <http://www.consumer.gov/sentinel/>. The Louisiana Auctioneers Association (letter dated May 9, 2006) states that the \$10,000 surety bond could be used to pay restitution

Recently, problems involving non-shipment of merchandise have occurred with fraudsters from overseas stealing legitimate eBay accounts and eBay user IDs.<sup>18</sup>

To the extent that TAs have high feedback ratings, removing them from the market may actually make consumers worse off.<sup>19</sup> Recent academic studies suggest eBay sellers with high feedback scores are more likely to provide accurate information and are less likely to commit fraud.<sup>20</sup> Moreover, to the extent that TAs rely heavily on having a good feedback score for continued business, TAs are less likely to provide poor information or commit fraud. Further, to the extent that TAs have physical locations and brand names, they would have even less incentive to harm or mislead consumers.<sup>21</sup> If licensing were voluntary for TAs, they may have an incentive to become licensed auctioneers or licensed auction businesses to signal their trustworthiness to potential sellers and buyers. Voluntary memberships in the Better Business Bureau or voluntary licensing as an auctioneer or an auction business are two ways for TAs to establish trust with potential clients and customers.<sup>22</sup>

### Conclusion

Consumers in Louisiana benefit from the use and availability of TAs. The LALB's requirement that TAs become licensed auctioneers or licensed auction businesses is likely to harm consumers by reducing choice and increasing prices. Although there may be legitimate consumer protection concerns associated with auction fraud, the LALB's action does not seem to be tailored to such concerns. Based on our review, FTC staff believes that if enacted, SB 642 is likely to enhance consumer welfare in Louisiana.

We appreciate the opportunity to present our views. Please do not hesitate to contact us about this issue.

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to a consumer (presumably a consumer who is a buyer) for a fraudulent sale. While a surety bond could protect those buyers, there are other protection mechanisms available to buyers in the online auction marketplace.

<sup>18</sup> See, e.g., Benjamin Sutherland, *Swimming With Sharks*, NEWSWEEK INT'L (March 27, 2006), at <http://www.msnbc.msn.com/id/11900480/site/newsweek/>.

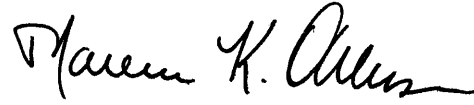
<sup>19</sup> See note 9, *supra*, for an explanation of feedback ratings.

<sup>20</sup> See, e.g., Ginger Jin, *Price, Quality and Reputation on eBay*, Presented at FTC Internet Auction Roundtable (Oct. 27, 2005), at <http://www.ftc.gov/be/workshops/internetauction/gingerjinslides.pdf>.


<sup>21</sup> When there are information problems in a market, reputations and brand names may play an important role in building trust with customers. See, e.g., James Lacko, *PRODUCT QUALITY & INFORMATION IN THE USED CAR MARKET*, FTC Bureau of Economics Staff Report (Jun. 1986).

<sup>22</sup> Standard economic reasoning, dating back to work by Nobel Laureate Michael Spence, suggests that if there are higher costs to hucksters becoming licensed auctioneers relative to honest service providers, then voluntarily becoming a licensed auctioneer sends a signal of quality to potential sellers and buyers. See Michael Spence, *Job Market Signaling*, 87 Q. J. ECON. 355 (1973).

Respectfully Submitted,



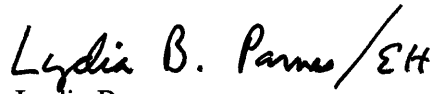
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