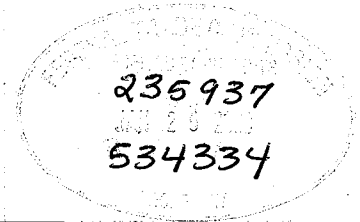


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

DOCKET NO. 9320

PUBLIC VERSION

IN THE MATTER OF

REALCOMP II LTD.

APPEAL BRIEF OF COUNSEL SUPPORTING THE COMPLAINT

Jeffrey Schmidt
Director

Kenneth L. Glazer
Deputy Director

Melanie Sabo
Assistant Director

Patrick Roach
Geoffrey Green
Deputy Assistant Directors

Sean Gates
Peggy Bayer Femenella
Joel Christie
Linda Holleran
Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, DC 20580

Dated: January 25, 2008

TABLE OF CONTENTS

I. STATEMENT OF THE CASE 1

 A. Introduction 1

 B. Summary of Argument 3

 C. Statement of Facts 6

 1. Real Estate Brokers and Commissions 6

 a. Exclusive Right to Sell Listings, Exclusive Agency Listings, and
 Commissions 7

 b. Competition Among Full Service and Discount Brokers 9

 2. The Realcomp MLS 10

 3. Realcomp Adopted Policies to Limit the Exposure of EA Listings Because
 They Allow Consumers to Pay a Reduced Commission 12

 4. The Impact of Realcomp’s Policies on the Exposure of EA Listings ... 13

 a. The Website Policy Substantially Limits Exposure of EA Listings
 to Buyers 13

 b. The Realcomp Search Function Policy Limited Exposure of EA
 Listings to Cooperating Brokers 15

 5. The Impact of the Realcomp Policies on Competitors and Consumers .. 16

 a. Discount Brokers Face Obstacles to Using EA Listings in
 Realcomp 16

 b. The Policies Deterred Entry and Caused Discount Brokers to
 Change Their Business Models and Lose Business 17

 c. Consumers Pay More or Receive Less 19

 d. Market Data Confirm That EA Listings Are Rare in Realcomp . 20

	i.	Time Series Analyses	20
	ii.	Benchmark Comparisons	21
	iii.	Regression Analyses	23
D.		Proceedings Below	23
E.		Standard of Review	24
II.		ISSUES PRESENTED	24
III.		ARGUMENT	25
A.		The ALJ Failed to Understand That the Principal Tendency of Realcomp’s Policies is to Stifle Competition	25
	1.	The Policies Penalize Discounting	26
	2.	The Policies Limit Consumer Choice and Restrict Competition by Reducing the Packages of Services Available in the Market	28
B.		The ALJ’s Conclusion That EA Listings Are “Sufficiently Accessible” is Wrong and Reflects a Misunderstanding of the Character of the Restraints	29
	1.	The ALJ’s Heavy Reliance on a Single Unsupported “Statistic” is Misplaced	30
	2.	The ALJ Failed to Understand the Competitive Significance of MoveInMichigan.com and the Realcomp IDX	31
	3.	The ALJ Failed to Understand That All Other Real Estate Websites Combined Reach Only a Small Fraction of Buyers	33
	4.	The ALJ Ignored the Impact of the Search Function Policy	34
	5.	The ALJ’s Focus on Alternatives Demonstrates a Misunderstanding of the Principal Tendency of the Policies	35
C.		The ALJ Erred in Finding the Policies Plausibly Justified and Failed to Require Realcomp to Show Procompetitive Effects	36
	1.	Realcomp’s Proffered Justifications are Not Plausible	37

