

Comments for the DOJ / FTC Real Estate Competition Workshop

I think the biggest change in our real estate market in the last 10 years is the number of consumer options available. We have low-cost models. We have cash, quick sale models. We have high price, concierge service models. And I think the reason that these models have disseminated is due to the ubiquity of data. When these rules were first conceived (more than 10 years ago), we were still an industry where the listing information itself was a big value-add. For listing brokers this meant access to the MLS and the ability to disseminate to local agents. For buyers, this meant that their agent was the gateway to property information. While real estate data is still the center of the real estate industry, it is no longer the center of brokerage value.

Today, brokerages define the value almost completely outside of the real estate data itself. EVERY listing broker has the ability to disseminate their listings to the point it is nearly considered public domain. EVERY buyers agent (and most of the public!) has access to these listings. So brokerages define their value differently. Some offer convenience (a cash offer for your home, on the spot, for example). Some offer concierge, we-take-care-of-everything service. Others still provide value through their marketing and presentation efforts — elaborate lifestyle videos and intimate knowledge of specific neighborhoods.

As stated above, agents were once the gatekeepers of real estate data. Syndication, public-facing MLS websites, and national broker portals (Redfin, ColdwellBanker.com, VOWs) have changed that. Listing information is now available to anyone, anytime, anywhere for the vast majority of the United States. This was not the case in the early 2000s. I think in most markets this has increased broker fragmentation and increased competition. I think it is much harder for a dominant brokerage or even dominant agent to remain in control of high marketshare percentages as a result of this data freedom. As you might imagine, outside agents representing buyers can now claim to have nearly the same access to listings and competing listing brokers can offer the same level of exposure. This has greatly increased competition.

The benefits of these platforms are increase in market fragmentation and greater consumer choice. You no longer have to use the dominant agent to get exposure. *This means consumers are more likely to choose a broker based on quality and value proposition rather than market entrenchment.* I think one of the drawbacks to this data freedom, though, is a reduction in data quality and accuracy. The existing system of MLS rules provides for a mechanism of accountability and a method to correct inaccuracies. Ingeniously, the MLSs which contract directly with syndicators such as

Zillow have managed to contractually create this, but a data free-for-all could create a scenario where there is the widespread dissemination of bad data. This would be a negative for consumers.

I think the biggest barrier to entry into the real estate market has (and I believe will continue to be) the nature of an interpersonal sales relationship. This is hard to scale largely and it's one of the reasons why the industry has not experienced the same technical revolution or disruption as say, the taxi industry. A bad Uber ride involves < \$25 and an unpleasant experience you will have forgotten about in a week. A bad real estate transaction could cost you tens of thousands of dollars and you will never forget it. Consumers need to have intimate trust in the person and firm who are representing their interests. I do not believe technology imposes any barriers to entry for new market participants. On quite the contrary, I think technology has not only allowed, but encouraged newcomers which has given consumers greater choice. The gift of technology is a more efficient method of pairing consumers to the brokerage model which works best for them and their situation.

While the soon-to-be-expiring consent decree has ensured that organized real estate does not take measures to block out competition, it has also been its own restriction and force against innovation. Our rules governing dissemination of other broker's listings have essentially been frozen in time, going back a decade. So while we have guaranteed fairness for VOW, these rules have also stifled creativity. The consumer is best-served by a listing that is free to be disseminated everywhere with only the necessary restrictions on data accuracy and listing credit / honesty. In many ways the open market has progressed so far that brokers are now at a competitive disadvantage versus syndicating websites, which are not brokers and not beholden to the same rules.

So what is the government's role in the real estate industry? I propose as a bystander, only stepping in when absolutely necessary. I believe the average home buying consumer really wants two things:

1. Easy access to learn about and see the homes on the market
2. Representation by and agent with a fiduciary obligation to the consumer's best interests

One may argue that the consumers don't realized they need #2 until the transaction has been completed. But putting that aside, if the government were to take a heavy-handed regulatory approach, we may end up with a free-for-all with inaccurate data and no representation for consumers. I believe the MLS and Realtor industry leaders have

done a very good job being stewards of system that gives consumers representation, guarantees data accuracy, AND allows for new market entrants. But the current consent decree and defacto reality of an MLS rules set which has not and cannot be updated actually stifles further innovation and competition. Right now individual agents have very little ability cross-advertise listings on burgeoning social media platforms — such a move would further encourage competition amongst brokerages. The goal of of the FTC should not be replacing the consent decree, but giving the efficient market an opportunity to open up further and flourish.