



May 18, 2018

Chairman Joseph Simons
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: **Competition in Real Estate Brokerage Workshop, Project #747**

Dear Chairman Simons,

PDFfiller, Inc. (“PDFfiller”) appreciates the opportunity to comment on competition in the residential real estate brokerage industry. PDFfiller’s comments concern the use of electronic forms and paperless transaction management software (“PTM Software”) to facilitate real estate transactions. Specifically, the comments below describe (i) the benefits conferred by such forms and software; (ii) the competitive conditions for PTM Software in various U.S. states; and (iii) the harm to innovation and consumer welfare caused by tying restraints imposed on the use of PTM Software in certain real estate transactions.

PDFfiller, formed in 2008, is a comprehensive online document management platform that provides the services of an online document editor, cloud storage platform, and a signature request manager all in one package. Over ten million people access PDFfiller’s website, www.pdfFiller.com, every year, and our customers fill in 20,000 electronic forms each day. PDFfiller’s PTM Software is used by tens of thousands of real estate professionals.

I. PTM Software – Its Uses And Benefits

PTM Software does precisely what its name suggests: it enables consumers to reduce the amount of paperwork required for a transaction by permitting users to manipulate and transmit documents electronically, without the need to complete manually, print, scan, or physically mail paper forms. In particular, PTM Software has revolutionized document management in the real estate industry by streamlining the process for annotating, completing, signing, transmitting and storing documents relevant to real estate transactions. PTM Software has robust features and functionality precisely because of the competitive nature of the market and the incentives that are aligned with providing robust, full-featured and easy-to-use solutions.

Of course, PTM Software providers will only continue to innovate if they are able to access, and are incentivized to compete for, prospective customers in existing and new markets.

The term “PTM Software” does not describe one particular set of tools. Rather, PTM Software functionality varies between products and providers. For example, some PTM Software merely permits the user to complete certain pre-defined fields in a form and print or email the document. Other PTM Software may host users’ documents in cloud storage, so that it can be accessed remotely; may simplify the documentation process in complex transactions by allowing for the automatic population of certain uniform information across different documents; or may permit encryption, authentication, and redaction of documents to enhance user security and privacy.

In a market free of competitive constraints, consumers select a PTM Software product based on its price and the extent to which the product’s features align with the consumer’s needs. As a result, providers often create industry-specific PTM Software, or market their software as especially suitable for a particular use. A PTM Software provider might seek to attract sales professionals, for example, by offering integration of the product with customer relationship management software, such as Salesforce. PTM Software aimed at healthcare professionals might emphasize the availability of HIPAA-compliant document storage and transmission capabilities. And in the real estate industry, PTM Software (including the product offered by PDFfiller) typically features electronic signature functionality and transaction management support (such as checklists and online folders for keeping copies of documents), in addition to the ability to edit, annotate, automate, and email electronic real estate forms.

The precise contours of PTM Software are therefore driven by customer demand. It follows, then, that open competition for the supply of PTM Software maximizes product innovation, lowers the cost to consumers (through vigorous price competition), and generally enhances value and consumer welfare.

II. Restraints On Competition For PTM Software In The Real Estate Sector Reduce Consumer Welfare

Like the vast majority of PTM Software providers, PDFfiller does not create its own real estate transaction forms, the content of which varies from state to state. In most states, real estate professionals are able to manipulate their electronic fillable real estate forms using their

preferred PTM Software. In Texas, for example, a real estate professional can obtain electronic forms from the Texas Real Estate Commission (a state agency), or from third party vendors such as the Texas Association of Realtors, or U.S. Legal Forms, Inc. These forms can be loaded onto any PTM Software platform, including PDFfiller, dotloop, and SkySlope (the latter two both real estate-specific PTM Software).

In other states, however, the dominant provider of electronic real estate forms limits consumer choice by requiring real estate professionals to use proprietary PTM Software as a condition of purchasing the electronic forms – an archetypal tying practice. For instance, in both Iowa and Florida, the state affiliates of the National Association of Realtors¹ require that their electronic forms be accessed through Form Simplicity, a PTM Software product owned by the Florida Realtors association.²

Similarly, in California, the non-profit trade association, California Association of Realtors (“CAR”), produces electronic real estate forms that it claims are “used in nearly every transaction in California.”³ In part, this is because it makes those forms freely available to its 180,000+ paid members.⁴ But it is also likely attributable to CAR’s description of its products as “official agreement[s]”⁵ and “Standard Forms,”⁶ titles which give consumers the impression that CAR’s are the only forms permitted for use in real estate transactions in California.

CAR, through a wholly-owned for-profit subsidiary, owns and controls RE FormsNet LLC d/b/a zipLogix, LLC (“zipLogix”). zipLogix is a for-profit supplier of a suite of PTM Software products known as zipForm. CAR members and others wishing to use CAR’s forms are required to use zipForm and are prohibited from exporting the forms onto any other PTM Software platform.⁷ California real estate form consumers can only access zipForm if they pay approximately \$600 a year for CAR membership or by buying a subscription to zipForm, which costs close to \$1000 a year. By comparison, PDFfiller’s PTM Software starts at \$72 a year,

¹ The Iowa Association of Realtors and Florida Realtors, respectively.

² See <http://www.formsimplicity.com/about/>.

³ The CAR website that contained the claim, <http://www.car.org/aboutus/mywbooklet/>, is no longer available. An archived version can be found at <https://web.archive.org/web/20160814071102/http://www.car.org/aboutus/mywbooklet/>.

⁴ See <https://www.car.org/aboutus/mission>.

⁵ An archived version of the relevant webpage, <http://www.car.org/aboutus/forconsumers/buying/transaction/>, is available at

<https://web.archive.org/web/20170204134453/http://www.car.org/aboutus/forconsumers/buying/transaction/>.

⁶ See <https://www.car.org/en/zipform>.

⁷ See <https://www.car.org/zipform/zf/standardformsterms>.

dotloop and SkySlope both offer their most basic packages for free,⁸ and prices for DocuSign's PTM Software product for real estate professionals begin at \$120 a year.

In other words, through tying, CAR is able to force participants in “nearly every [real estate] transaction in California” to pay a grossly inflated price to access PTM Software in which CAR has a financial stake. But CAR's price gouging is not the only unattractive element of zipForm. PDFfiller offers a variety of tools that are very useful for real estate professionals trying to use PTM Software. For example PDFfiller has built-in signature solutions, so no integration with other vendors are necessary. PDFfiller also has extensive templating, payment solutions, audit trails, enhanced security through 2-factor authentication and mobile applications both for IOS and Android. In fact, PDFfiller has over 100 features that can be used to expedite and complete real-estate transactions without the use of paper at all.. None of these features are available through zipForm. For that reason, many real estate consumers seek to use PTM Software other than zipForm to manage their electronic transaction documents.⁹ zipForm's tying practices therefore deprive users of choice in PTM Software.

This type of anticompetitive conduct carries with it an additional harm: by preventing zipLogix's competitors from being able to compete for the business of California real estate professionals, CAR disincentivizes those competitors from investing in innovation. Simply put, PDFfiller and other PTM Software providers have a lesser interest in improving or creating real estate PTM Software offerings, given that the availability of a superior product cannot win over the large number of consumers unwillingly bound to zipForm. Likewise, zipLogix has no incentive to improve its California offering, as CAR's customers have no choice but to use zipForm. And because meaningful competition against CAR and its subsidiaries can only take place at the real-estate form level, PTM Software providers wishing to draw away zipForm customers in California would be forced to produce their own real estate forms – plainly a time-consuming, costly, and inefficient way to compete for PTM Software sales.

⁸ See <https://www.dotloop.com/products/plans-pricing/> and <https://fitsmallbusiness.com/best-real-estate-transaction-management-software/>.

⁹ See, e.g. <http://journal.firsttuesday.us/airing-cars-laundry-dirty-forms/25394/> (users complaining about zipForm in the “Comments” section); <https://www.g2crowd.com/products/zipform-plus/reviews/zipform-plus-review-138770/>; <https://www.g2crowd.com/products/zipform-plus/reviews/zipform-plus-review-257280/> (negative review of zipForm Plus); <https://www.g2crowd.com/products/zipform-plus/reviews/zipform-plus-review-371623/> (same); <https://www.g2crowd.com/products/zipform-plus/reviews/zipform-plus-review-138880/> (same); <https://itunes.apple.com/us/app/zipform-mobile-companion/id538083561?mt=8> (user reviews of zipForm Mobile, most of which award one out of five stars).

III. Conclusion

There can be no doubt that an open and competitive marketplace for PTM Software benefits all consumers, including real estate professionals, by driving down prices and spurring innovation. Conversely, the tying of a particular PTM Software product to the purchase of a dominant brand of electronic real estate form deprives consumers of price competition, restricts consumers' ability to reward product quality with their patronage, and consequently saps the incentive of all market participants (including the incumbent) to engage in the creative destruction that drives innovation.

PDFfiller therefore urges the Commission and the Department of Justice to take appropriate action to ensure that free competition on the merits fosters innovation, product quality, and low prices in real estate technology markets. Thank you again for the opportunity to provide these comments. Please do not hesitate to contact me if PDFfiller may be of further assistance.

Sincerely,



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Boris Shakhnovich

CEO

PDFfiller