

**Zillow Group Public Comments**  
**FTC-DOJ Workshop: “What’s New in Residential Real Estate Brokerage Competition”**  
**Workshop Date: June 5, 2018**

**I. Introduction / Background**

Zillow Group (“Zillow”) appreciates the opportunity to submit comments to the Federal Trade Commission and the Department of Justice in connection with the June 5, 2018 joint workshop entitled “What’s New in Residential Real Estate Brokerage Competition.”

Zillow believes in strong competition in all facets of the real estate industry. We further believe that consumer empowerment and business innovation are made possible by “turning on the lights” and enabling consumers to have free access to more and better data about the real estate choices they are making.

Consumers now have more access to data about the real estate market than ever before, and this is unequivocally beneficial to the consumer experience. In the years since the 2007 FTC-DOJ report on competition in the real estate industry, Zillow and others have leveraged technology to organize and make available a wealth of information that improves the home buying and selling process. This data includes listings from thousands of different sources, including brokers, MLSs, and individuals. Our focus has been to compile the most data possible in a comprehensive way that serves the needs of both sellers and buyers. This democratization of data by Zillow and other technology and consumer-focused sites has fostered further innovation and enabled robust competition.

The FTC-DOJ workshop was timely because this is an incredibly exciting time in the real estate industry. As we heard during the workshop, there are new brokerage models emerging, as well as new innovations and technologies that strengthen consumer awareness and choice. In addition, tech-enabled real estate companies from abroad have recently launched in the United States, and large technology companies such as Facebook and Amazon have started to participate in the digital real estate and mortgages industries – further enhancing competition.

**II. Consumer Transparency**

Zillow does not believe listing data needs to be nor should be treated as a public utility, but “data democratization” is core to our mission – putting as much quality information as we can into the

hands of consumers. Providing consumers with more and better data about home listings, whether on portals or other broker sites – for free – empowers consumers and enables them to make better choices when buying or selling a home. While Zillow has been a pioneer in “turning on the lights” for consumers, we are seeing a proliferation of new, well-funded, and often venture-backed brokerages with new business models such as: Compass, eXp, HomeSmart, Purple Bricks, REX Real Estate, RealtyOne, and Trelora. These businesses are providing additional paths for consumers to access listing information. At the same time, more established companies like Keller Williams, Realogy, and RE/MAX are all making significant investments in technology to provide consumers with better access to listings and real estate information.

Zillow’s efforts to provide greater data to the consumer do *not* mean, however, that real estate professionals are no longer needed. To the contrary, consumers still rely on agents for these complicated and infrequent real estate transactions – on both the buyer and seller side. Home shoppers are now better equipped and informed with comprehensive information about the listings and the process as a whole *before* they engage an agent. Zillow is able to provide consumers innovative new tools because of the availability and transparency of data. There are many other innovators who are working to improve the consumer experience and who are better able to do so because of the availability of data. Wide availability of listing data also fosters greater competition among agents and brokerages to represent these well-informed consumers. On the seller side, the broker enters into a contract with the seller pursuant to which the seller expects that their broker will market their home widely. In fact, it is the broker’s fiduciary responsibility to do so.

Zillow does not believe there should be any artificial obstacles to the free flow of data to consumers, and we are greatly concerned by any proposals that would restrict or impede the continuing democratization of data.

Although not discussed at the FTC-DOJ workshop, Zillow is concerned about the Upstream real estate broker consortium project (“Upstream”) that has now launched. According to Upstream, brokers representing 150,000 real estate agents have pledged support for Upstream when it reaches their markets. Ostensibly, the goal of Upstream – an industry consortium of would-be competitors aiming to consolidate data in one place – is to address data input inefficiencies. However, members of Upstream’s board have repeatedly commented in public settings and in written communications that one goal of Upstream is to allow brokers to restrict data distribution to online portals (e.g. delayed listings, limited listing information, limited photos). For example, in May of this year, Upstream’s chairman, Dan Elsea, gave a presentation at the National Association of Realtors’ conference in Washington, D.C. In Elsea’s presentation, he clearly touted “control” of listing data as one of the key benefits of Upstream.

Our concerns with Upstream extend beyond online portals. Unreasonable restrictions on the sharing or distribution of listing data could also negatively impact smaller brokers who may not be participants in the consortium as well as make it harder for new entrants and smaller companies to compete fairly. Additionally, MLSs could potentially lose the ability to address the needs of local jurisdictions and market participants. Real estate is fundamentally a local operation, and a nationwide database of listings and related information controlled by large brokerages could lead to the erosion of data access for consumers.

Given Zillow's consumer orientation, we are concerned that Upstream could control the distribution of data to consumers in a way that degrades the completeness and freshness of listings data. After all of the innovation and increased transparency in the real estate industry over the past decade, Zillow is concerned when a group of competitors could get together and create a system that restricts the flow of information to consumers; create a forum to discuss restrictions on listing access; and create a technology that explicitly provides for such restrictions.

Absent the potential erosion of equitable access to listing data by Upstream, most listing data is ultimately available to industry participants and consumers. Having said that, Zillow spends significant resources navigating the various barriers to accessing listings data – which are largely driven by protectionist, not technical factors. Even today, various entities attempt to restrict the legitimate display of listings to buyers. Some large brokerages refuse to provide all their listings to Zillow. If sellers understood that their fiduciaries were restricting data from appearing on the largest real estate site in the U.S., they would likely be upset. Initiatives like Upstream make the potential for such behavior more feasible and commonplace.

Zillow agrees with the Council of Multiple Listing Services (CMLS) that another issue regarding limits to data transparency concerns disclosure of public records. In addition to the point raised in CMLS' comments that no state provides real-time, statewide access to real property tax public-record data through an API, Zillow believes that certain states' non-disclosure laws substantially degrade the ability of consumers to be fully informed. General resistance to sharing data, especially data on past sales, makes it nearly impossible for consumer-facing sites like Zillow to provide consumers with a comprehensive view of what's happening in markets with non-disclosure laws.

During the workshop, all participants seemed to agree that over the past 10 years, the real estate industry has witnessed a dramatic increase in the amount of data available directly to consumers – for free. There was also widespread agreement that there has been greater innovation and competition during the same time period. There is an obvious correlation between the democratization of data and greater innovation and competition. We encourage the FTC and DOJ to guard vigilantly against any efforts to stifle such innovation and competition through the artificial restriction of data flowing to consumers.

### **III. The Importance of Buyer Agency**

Buying a home is one of the most significant financial and emotional decisions a consumer will make. And although Zillow has created more empowered and informed consumers, home-buying remains a complex process. For these reasons, Zillow firmly believes that it is important for prospective buyers to have the choice of working with an agent who exclusively represents them and their interests in the transaction.

Some buyers choose to work with the listing agent, and in some segments of the market – such as high-end, luxury markets – dual agency is often more prevalent. At Zillow, we want buyers to be fully informed of the benefits and pitfalls of dual agency, including that the listing agent has a fiduciary responsibility to the seller and not to them. This may seem obvious, but it is not always so to home shoppers. As a result, a handful of states have prohibited dual agency. As a consumer-centered company, we are committed to connecting consumers to real estate professionals who can represent their best interests when buying a home. Zillow’s Premier Agent program is a clear, straightforward way for prospective buyers to find and work with a buyer’s agent who is representing their financial interests.

During the FTC-DOJ workshop, some participants went to great lengths to criticize the ability of buyer’s agents to engage and communicate with consumers directly, whether through advertising on third-party websites or their own individual broker websites. Many of these comments seemed to be a concerted effort to discourage the use of buyer agency by consumers – which was pointed out by a DOJ attorney during a panel. For the reasons stated above, Zillow maintains that consumers are generally best served when represented by agents who have a fiduciary responsibility to one client in the transaction. Policies and actions to curtail the use of buyer agency are harmful to consumers.

Zillow would also like to address comments made by some panelists criticizing how listing agent attribution is conducted today. Every listing on Zillow’s websites already clearly shows the listing agent – for free – along with his or her contact information, profile, broker information, and a link (if provided by the listing agent, broker, or MLS). The consumer is also able to easily email the listing agent on our websites. Zillow’s websites provide more clear information about the listing agent than many real estate brokerage websites, including some whose representatives spoke at the workshop. Further, none of our consumer research or data shows consumer confusion when it comes to choosing an agent. If a consumer wants to do more research, we provide all the necessary information and links for this to happen easily – whether they want to contact the listing agent or a buyer’s agent.

#### **IV. Other Restricted Forms of Competition in Real Estate**

Zillow is also concerned about restrictions on the use of standardized real estate contracts and forms. In many states, realtor associations have created standard templates for purchase-sale agreements and other documents. As digital transaction platforms have emerged over the last decade, most realtor associations have licensed their forms for use within various digital platforms, allowing purchase agreements and disclosure forms to be filled out, shared, and signed electronically.

In California, the situation is different. The California Association of Realtors (“CAR”) has created a form-set that is so ubiquitous that many agents will refuse to review an offer submitted on any other forms. CAR is the majority shareholder of a digital transaction company called ZipLogix. ZipLogix’s other large shareholder is the National Association of Realtors. CAR refuses to license its forms to any entity other than ZipLogix.

Zillow has offered to license CAR’s forms on the same general terms we have in license agreements with realtor associations in other states. We have also provided requests from CAR’s own members asking that they license the forms to Zillow. After nearly three years of requests, CAR continues to refuse to negotiate with us. Meanwhile, the National Association of Realtors has agreed to subsidize the core ZipLogix platform, providing it for free to every Realtor in the country. This makes it difficult for Zillow and other providers of digital transaction platforms (e.g., Instanet, Skyslope) to compete.

#### **V. Price Competition/Commissions**

One area where consumers have not gained greater transparency to data and information, however, is commissions. As discussed during the workshop, like other third-party portals, Zillow does not have visibility into the actual commissions paid during a transaction or how those commissions might be split.

Zillow does not take a position as to what the appropriate level of commissions should be, or whether or how such commissions should be shared. Zillow Group’s core business is an advertising platform to real estate professionals and as such, we have no more insight into the topic of commissions than a newspaper or direct mail company would. However, our own research does show that commissions have not changed substantially.

That being said, Zillow would like to respond to the misleading notion that Zillow or other portals like Realtor.com are responsible for keeping commissions high because they charge agents and brokers for advertising. Advertising is nothing new in the real estate industry, and this has been a cost that brokers and agents have incurred for decades. In the past, the lion’s share of the costs

were for offline advertising (e.g. newspapers, bus stops, billboards, direct mail, etc.) – likely with far less effective results and certainly with far less *measurable* results. For many agents and brokers, online advertising is a supplanted cost not an additive one – as it has replaced many of the offline methods they once used.

Investments in online portal advertising are a small part of the real estate commission picture. Industry commissions in 2017 were estimated to be approximately \$87 billion while the net sum of online portal advertising is less than \$1.2 billion – which accounts for only 1.4% of commissions.<sup>1</sup> As you can see, the portion of commissions that could account for investments in online portal advertising is remarkably small. Clearly, real estate agents are deploying their resources and investments in other areas that are not online portal advertising. In fact, total real estate commissions have grown over the last 4 years while the percentage of commissions spent on total advertising has decreased.<sup>2</sup>

## **VI. Zillow’s Premier Agent Reviews**

Zillow would like to directly respond to comments made by Mr. Brobeck of the Consumer Federation of America during the June 5 workshop regarding agent reviews – comments he admitted onstage to making without fully understanding the program. Zillow agent reviews are intended to promote confidence and transparency for home shoppers as they make one of the biggest financial decisions in their lives. Zillow prides itself on being a consumer-centered company, whose mission relies on empowering consumers and being a trusted marketplace for home shoppers.

All reviews on Zillow are written and submitted by consumers on Zillow’s platform. As with any industry or review system, real estate agents can ask their clients to submit reviews on Zillow; however, the agent does not have any control to edit or delete reviews. Zillow has implemented an extensive process to audit the veracity of submitted reviews. As part of this process:

- Every review submitted is screened to ensure it meets our strict guidelines for relevancy and authenticity.
- We filter out potentially biased reviews, such as those from family members and employees, as well as spam reviews or those associated with invalid or disposable email addresses.
- We monitor unusually high submissions by users as well as unusually high numbers of reviews for professionals.

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<sup>1</sup> 2017 Borrell Report <https://www.borrellassociates.com/industry-papers/papers/2017-real-estate-paper-detail>

<sup>2</sup> 2017 Borrell Report <https://www.borrellassociates.com/industry-papers/papers/2017-real-estate-paper-detail>

- We also use proprietary technology to scan reviews for fraudulent behavior.

## **VII. Conclusion**

The 2007 FTC-DOJ report on competition in the real estate industry stated that *“the marketplace is likely to function more efficiently – and provide greater benefits to consumers – when consumers have direct access to more information about those listings. The important role played by more listing information being made directly available to consumers underscores the benefits of the antitrust actions against collective action to reduce the availability of such information.”*

We couldn't agree more. Online portals provide a one-stop home search experience that consumers want and deserve. To be sure, providing consumers with more information about buying and selling has been the backbone of our successful business, but it has not come at the expense of traditional real estate businesses or the consumer. On the contrary, agents are still involved in 90% of residential real estate sales, and thousands of real estate agents make a living collecting commissions in exchange for their local, personalized expertise. Maintaining a strong competitive landscape and giving buyers and sellers free, high-quality information about their homes and financial decisions have been key factors in maintaining a thriving real estate marketplace and are worth preserving in the future.

Our nation's unique MLS system is also a cornerstone to providing the industry with an efficient marketplace. Most countries outside the U.S. do not have a comparable MLS infrastructure, and the lack of the MLS causes incomplete marketplace information for sellers to know how to price their homes, lack of transparency for buyers to see all of the inventory, and requires brokers and agents to specialize in micro-localized areas (sometimes as small as 10 square blocks) – reducing competition and creating a poor consumer experience.

Zillow believes the real estate consumer is best served when they have free access to more and better data and information and when there is strong competition and innovation in the real estate industry. We are proud to play a part in providing easier and better consumer transparency within real estate in the last decade and for decades to come.

Zillow appreciates that the FTC and DOJ took the time to explore how the industry has changed and the impact it has had and will have on the consumer. Particularly, thank you to the FTC and DOJ staff for organizing the workshop and for their dedication and service.