

July 31, 2018

This is public comment for the Federal Trade Commission and Department of Justice joint public workshop held in Washington, DC on June 5, 2018.

I am Jim Battan, Founder and CEO of Builts Corp, a real estate technology startup focused on the residential real estate marketplace. I started the company because of eye-opening insights gained during the buying and selling of my own homes both via agents and FSBO (two FSBO sales, one agent sale, one FSBO buy, and two agent buys). What is usually referred to as a "complex" real estate transaction is primitive compared to many "hard tech" industries (airplane mfg, autonomous driving, and space exploration, e.g.). Granted I have a Mensa-level IQ, but it was very easy for me to FSBO, despite many impediments by the real estate ecosystem and confusion because of the varying laws, procedures, etc. My further extensive research over the past 18 months has shown that the real estate industry in the US is clearly anti-competitive and very unfair to the American consumer, and commission costs are so exorbitant as to prevent mobility of those wanting to move to more desirable locations. Despite my findings of numerous obstacles to a well-functioning marketplace, I will focus my concerns on the Workshop's four questions.

There has been a huge amount of competition entering the marketplace over the past ten years. New agents continue to flood an already oversaturated profession, brokerage models have changed to increase competition between traditional full-service agents, pocket listings have increased, reduced commission companies are gaining traction, and the Internet is making the availability of information about neighborhoods and homes much more accessible to the average consumer. In today's hot market, it's almost trivial to sell a home by any method. It has become clear that many people can do most of the work of finding suitable properties for sale without the assistance of an agent, and people who complete their own taxes using software that hides the 3.9 million words in the US tax code could certainly do FSBO if they had a platform that walks them through the process. The percentage fees that brokers charge has largely remained static, and with increasing home prices, the commission amounts are eye watering. But the work an agent does is largely the same regardless of the price of a home, so in high-value markets, consumers have to pay so much in commission that they could instead have sent their child through community college or bought a new car. Consumers are generally happy with the services an agent provides, but feel taken by the extremely high commissions. Ironically, due to the huge overhead of being an agent, with association and MLS fees, brokerage cuts, marketing costs, etc, most agents don't make a lot of money. There has been an industry-internal vocal push to "raise the bar", for it is astonishingly easy to become an agent, and there are numerous incompetent ones that give the industry a bad rap.

Internet technologies have greatly improved the process of finding, buying, and selling a home. Data ownership and access are the two current main flash points in the industry. The traditional brokerages are losing "their" data to portals such as Zillow and are increasingly calling to "take it back" to maintain their anti-competitive behavior. However, the MLS applications and data structure underlying those listings are ancient and archaic, extremely limited, largely closed to public access, and vastly fractured among 700+ organizations. Despite being the "envy of the world", the MLS is a mess compared to any modern data storage paradigm. It has obviously served its purpose for dozens of years, but it's time for a radical transformation. The only solution I've identified is a "clean slate" system that I am developing called the Open Real Estate Data System (OREDS) that puts the ownership of a property's extensive qualitative and quantitative attribute data into the hands of the property owner, who can then decide whether to keep all or some of it private, allow an agent to augment and market it for a sale, sell the property using FSBO, or use flat-fee professional assistance that is the norm in the legal, financial, and medical professions but not in real estate. OREDS will be published using CC-SA copyright protection (similar to Wikipedia) so that the industry can continue to enhance it for public benefit. Infighting and momentum will likely delay any meaningful consolidation of MLSs in my lifetime. The current consolidation standard, RESO, is merely a common data dictionary for the existing primitive MLSs.

"Competition" is nuanced. There is certainly vigorous competition in the sheer number of brokerages and agents, so agents spend much of their time prospecting for potential clients. There are numerous barriers to comprehensive competition, with disparate sources. In my experience, buyer agents won't touch FSBO listings unless the seller offers a full 3% BAC. (Numerous brokers would call me and verify that I was offering less than 3%, and would never present a potential buyer. As soon as I increased my BAC to 3%, I immediately had an order-of-magnitude more showings.) Each state defines its own real estate laws, leading to a need for specialization in a given geography, and each state's

regulatory boards are largely made up of industry insiders, so many states have rules against rebates, fee-for-service, and/or pricing disclosures that would result in greater transparency and reduced costs for the consumer. Commissions are largely kept quiet, under the cloak of anti-trust laws. Associations are largely self-governing for Code of Ethics violations, and the number of dishonest schemes grows daily. Dual agency, exacerbated by pocket listings, can put consumers at a disadvantage since most don't understand any disclosure of the implications of keeping both sides of the transaction. Fear, uncertainty, and doubt plague the average consumer due to the numerous disparate laws and large transaction value, and agents can play into that and prevent competent owners from attempting FSBO and saving tens of thousands of dollars.

After \$4B of VC investment and all the talk of "disruption", there's been very little. Most "competition" in the industry has taken the form of reduced commission brokerages, agent productivity tools, lead generation, and online closings. Does the industry need to be watched for anti-trust and anti-competitive behavior? I certainly don't trust today's real estate industry, so do recommend you keep an eye on it. I'd recommend you focus on making all state associations fairly represented, push for common laws across the states, and set the stage for flat-fee-for-service transactions. Capitalists such as myself will take it from there.