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Federal Trade Commission

Competition in Residential Real Estate Brokerage – An FTC-DOJ Workshop
Opening Remarks

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Good morning, and welcome. I want to thank you for coming to our workshop that we are hosting with the Department of Justice. Our plan is to explore the state of competition among residential real estate brokers. I'm delighted to welcome our colleagues from DOJ and our distinguished panelists, as well as everyone in attendance and those watching online. I also want to welcome some special guests from state and foreign competition enforcement agencies, as well as congressional staff. I believe this will be a very interesting day, and I want to thank the team from both the FTC and DOJ for pulling this event together.

Hosting public events, on important topics of the day, is a critical part of the FTC's work. These events help us take a step back from our enforcement work to develop a broader view and stay current with emerging trends, learn about new business models, and ask questions about how consumers are faring in fast-changing markets. Not only do we have an opportunity to learn from industry and academic experts, we can engage in a free-flowing dialogue about policy choices and industry behaviors that affect – and sometimes impede – competition. Public events like this one help us develop a better understanding of where to focus our future efforts for the

benefit of consumers—whether that involves enforcement, additional research, or advocacy before other policymakers.

Today, the focus is on competition among residential real estate brokers, and more generally, how technology is changing the way consumers buy and sell homes. On a topic like this, there's a lot at stake for consumers. For many, buying a home is the most important financial decision they will make. For most, it is the fulfillment of the American Dream. And, at the end of the day, the costs are potentially very high if something goes wrong. In this context, most home-buyers and sellers seek the help of a real estate professional to guide them through the process.

This market, like many others, is being transformed by the broad adoption of new technologies. Emerging tools support consumer-facing websites that allow prospective home buyers to view homes for sale nearly-instantaneously. It's easy to see how this has changed the home-buying experience for consumers—studies show that nearly all home buyers start their home search by going online. But there are changes occurring on the other side of transaction as well, as real estate brokers and technology companies adopt new strategies for marketing homes and generating leads. Even if the changes occurring in the market are driven by consumer demand, there is value in taking a broad view of market trends, so as to be sure that we understand the new marketplace dynamics. If necessary, we may need to recalibrate our expectations about what's important to consumers, and in turn allow that to shape both our consumer protection and competition efforts.

Which brings us to today's topic: what is the state of competition among residential real estate brokers? The last time we explored that broad question was at a joint FTC/DOJ workshop

in 2005. At that time, the news of the day was that real estate agents and brokers were beginning to use the Internet to match home buyers and sellers, and new business models were emerging that relied mainly on the Internet to market homes – so-called Virtual Office Websites. As I understand it, the market continues to evolve. Today, among other things, we’re going to hear about changes in technology and information flow that continue to affect competition among residential real estate brokers.

With all the talk today in antitrust circles about two-sided markets, real estate brokers recognized early on the benefits of compiling information on local homes for sale – first in printed books and today in efficient real-time databases. Cooperation among brokers can create a more efficient marketplace where sellers can list their homes and buyers can learn about homes for sale from many different brokers. But from an antitrust point of view, individual agents and brokers are competitors in the market for providing residential real estate brokerage services to consumers. So when they act together, they must comply with antitrust rules relating to competitors.

The agencies’ interest in real estate brokerage competition stretches back many decades. In 1983, the FTC issued a staff report on the residential real estate brokerage industry. That report highlighted the highly cooperative nature of the industry in which brokers depend on one another to sell homes efficiently. This cooperation has historically occurred through a local Multiple Listing Service, which operates as a broker-to-broker information exchange.

While cooperation among brokers generally benefits home buyers and sellers, the 1983 FTC report also identified two side effects of that cooperation: a lack of price competition and a mechanism for withholding cooperation from “maverick” brokers who had a different way of

doing business. These concerns are also documented in a 2007 FTC/DOJ report, where we noted again the lack of competition on commission rates, as well as enduring obstacles to competition such as restrictive MLS rules that discriminated against non-traditional brokers.

Concerns about the actions of broker associations to limit competition from “maverick” brokers have led the antitrust agencies to file several enforcement actions over the years. Most of those cases involved MLS rules that discouraged cooperation with limited-service brokers, such as the FTC’s successful challenge to Realcomp’s policy of excluding information about listings by non-traditional brokers in its MLS data feed.

Similarly, in 2005, the DOJ filed a successful suit against the National Association of Realtors alleging that its policies denied equal access to listings data for innovative brokers who relied on the Internet to do business.

In addition to potential anticompetitive effects from private restraints, we also know that there are other impediments to competition in these markets. The 2007 FTC/DOJ report identified a number of state laws that limit consumer choice and prevent discounting by real estate brokers. As a result, the agencies engaged in competition advocacy by commenting on a number of state proposals to impose minimum service requirements for brokers, or to require lawyers to perform certain services that were, at the time, provided by non-lawyers. We argued that these proposals were unnecessary to protect consumers, and could cause consumers to pay more for transaction-related services. We also identified state anti-rebate laws as a source of higher commission rates in those states that have them. Today, we will get an update on whether these or other state and local laws continue to impede robust competition among residential real estate brokers.

Finally, there are lingering concerns about how well consumers understand the complexities of the actual real estate transaction. As anyone who has bought or sold a house knows, the transaction is highly complex, with many layers of disclosures and multiple fees paid to different businesses providing services during the transaction. Some point to a lack of transparency as a source of consumer confusion, and a hindrance to more robust competition. We hope to explore this more today, and whether there are ways to help consumers feel more confident when they buy or sell a home.

There is much to discuss and learn, and we look forward to hearing from a variety of perspectives how the antitrust agencies can continue to foster competition in this market for the benefit of consumers. Again, I want to thank the panelists for their participation in today's workshop. A reminder that we will be collecting public comments through July 31, and I encourage those who have thoughts they want to share to submit a comment through the FTC's website.

Thank you again.