

SHERROD BROWN, OHIO, CHAIRMAN

JACK REED, RHODE ISLAND
ROBERT MENENDEZ, NEW JERSEY
JON TESTER, MONTANA
MARK WARNER, VIRGINIA
ELIZABETH WARREN, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
CATHERINE CORTEZ MASTO, NEVADA
TINA SMITH, MINNESOTA
KYRSTEN SINEMA, ARIZONA
JON OSSOFF, GEORGIA
RAPHAEL G. WARNOCK, GEORGIA

PATRICK J. TOOMEY, PENNSYLVANIA
RICHARD C. SHELBY, ALABAMA
MIKE CRAPO, IDAHO
TIM SCOTT, SOUTH CAROLINA
MIKE ROUNDS, SOUTH DAKOTA
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA
BILL HAGERTY, TENNESSEE
CYNTHIA M. LUMMIS, WYOMING
JERRY MORAN, KANSAS
KEVIN CRAMER, NORTH DAKOTA
STEVE DAINES, MONTANA

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

November 1, 2022

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

I write to urge the Federal Trade Commission (FTC) to review the current use of price optimization software employed by property owners to set rents. According to recent reports, the collection and use of rent data in price optimization software is allowing for anticompetitive and potentially unlawful collusion among competitors at the expense of consumers.¹

In 2017, RealPage, a provider of price optimization software, acquired their main competitor, Lease Rent Options from The Rainmaker Group.² This \$300 million acquisition resulted in RealPage becoming the dominant provider of this price optimization software.³ Since then, rental housing market concentration has increased and RealPage's influence has only grown.⁴

Alarming, recent reporting by ProPublica highlighted that RealPage's algorithm-based price optimization software, YieldStar⁵, is being used by a growing number of property managers and landlords, potentially impacting pricing and the supply of homes in the rental market.⁶ This software uses data analytics to suggest rent prices to landlords on a day-by-day basis, with the clear-cut purpose of maximizing revenue. RealPage reported to the Securities and Exchange Commission that as of 2020, they helped manage the operations of millions of units and that their clients, who use one or more of their software products, included the nation's ten largest multifamily property management companies.⁷ In

¹ "Rent Going Up? One Company's Algorithm Could Be Why," ProPublica, available at <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>; "Rental Pricing Co., Landlords Accused Of Cartel Activity," Law360, available at <https://www.law360.com/articles/1541346/rental-pricing-co-landlords-accused-of-cartel-activity>.

² "RealPage® to Acquire Lease Rent Options, LRO®," RealPage, available at <https://www.realpage.com/news/realpage-to-acquire-lease-rent-options/>.

³ "Rent Going Up? One Company's Algorithm Could Be Why," ProPublica, available at <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>.

⁴ Since 2002, RealPage has completed over 50 acquisitions. (United States Securities and Exchange Commission, RealPage, Form 10-K, available at <https://www.sec.gov/Archives/edgar/data/1286225/000128622521000007/rp-20201231.htm>.)

⁵ YieldStar and Lease Rent Options are now part of RealPage's AI Revenue Management product. ("Introducing AI Revenue Management," RealPage, pg. 5 available at <https://www.realpage.com/storage/files/pages/pdfs/2021/02/ai-revenue-management-lookbook-nov20.pdf>.)

⁶ "Rent Going Up? One Company's Algorithm Could Be Why," ProPublica, available at <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>.

⁷ United States Securities and Exchange Commission, RealPage, Form 10-K, available at <https://www.sec.gov/Archives/edgar/data/1286225/000128622521000007/rp-20201231.htm>.

2021, Thoma Bravo, a private equity investment firm that specializes in the software industry, acquired RealPage in a transaction that valued RealPage at approximately \$10.2 billion.⁸

For both single-family and multifamily buildings, the demand for rental homes far outpaces supply. Rental vacancy rates were just 5.6 percent at the end of 2021, the lowest vacancy rate since 1984.⁹ Yet, even in this tight rental market, there are reports that RealPage’s algorithm encourages property owners to keep homes vacant or push tenants out in order to maximize profits. ProPublica reported that, in 2017, Steve Winn, RealPage’s then-CEO, recognized on an earnings call that managers at one large property company found that when using RealPage’s software they could increase their profits by raising rents and leaving more units vacant.¹⁰ Intentionally holding units vacant, when there are so few homes available, decreases a consumer’s negotiating power and exacerbates the housing shortage.

For property managers and landlords, one of the most appealing aspects of this software is its access to competitor rent data. While the advertised price of a unit is public knowledge, it is not always publicly known what a unit actually leases for in the end. RealPage collects actual lease price information from its clients and uses the aggregated data as one of its inputs.¹¹ Troublingly, ProPublica reported that a former RealPage executive stated that the data could give insight into how competitors within a half-mile or mile radius are pricing their units.¹²

The FTC’s mission to protect consumers and maintain competition in our markets has never been more critical. And this mission has become increasingly complex as technology advances change how entire industries operate. Approximately 44 million households in the United States – nearly 35 percent – rent their homes.¹³ Renters should have the power to negotiate fairly priced housing, free from illicit collusion and deceptive pricing techniques. Recent reporting raises serious concerns about collusion in the rental market, and the FTC should review whether rent setting algorithms that analyze rent prices through the use of competitors’ private data, such as YieldStar, violate antitrust laws.

Thank you for your prompt attention to this matter.

Sincerely,



Sherrod Brown
Chairman

⁸ “Thoma Bravo Completes Acquisition of RealPage,” RealPage, available at <https://www.realpage.com/news/thoma-bravo-completes-acquisition-of-realpage/>.

⁹ “State of the Nation’s Housing 2022,” Harvard Joint Center for Housing Studies, pg. 32-33, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.

¹⁰ “Rent Going Up? One Company’s Algorithm Could Be Why,” ProPublica, available at <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>.

¹¹ “RealPage AI Revenue Management,” RealPage, available at <https://www.realpage.com/asset-optimization/revenue-management/?showPdf=true> (FAQs); “Changing the Way Multifamily Thinks About Apartment Market Research with Lease Transaction Data,” RealPage, available at <https://www.realpage.com/blog/changing-the-way-multifamily-thinks-about-apartment-market-research-with-lease-transaction-data/>.

¹² “Rent Going Up? One Company’s Algorithm Could Be Why,” ProPublica, available at <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>.

¹³ “Quarterly Residential Vacancies and Homeownership, First Quarter 2022,” Release Number CB22-58, U.S. Census Bureau, April 27, 2022, available at <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.