

Zillow Change to Its Platform Poses New Antitrust Questions

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A major technology innovator finds itself on the defensive this week after a start-up company [filed an antitrust lawsuit](#) for alleged deceptive business practices. A tech-based online broker named Rex alleged that the National Association of Realtors (“NAR”) and Multiple Listing Services (“MLS”) operate as a cartel to control access to real estate markets, and that Zillow joined their efforts and cut Rex out of the market.

Zillow, the top real estate listings website, recently changed their online listing policy to segregate listings by real-estate broker type. Rex, founded in 2015, uses data and artificial intelligence rather than traditional brokers to match sellers to home buyers. Rex alleges that Zillow has relegated all listings that are not maintained by brokers who belong to the National Association of Realtors (“NAR”) to a “hidden tab” on their website. This change, Rex claims, unfairly lowers the visibility of its listings.

The real-estate sector has been no stranger to technology-focused antitrust claims. For example, in [Realcomp II, Ltd. v. FTC](#), the Sixth Circuit upheld judgment for the FTC on its claim an association of real estate boards and associations violated Section 5 of the Federal Trade Commission Act for limiting public distribution and display of certain property listings based on the nature of the listing contract. Realcomp had prohibited information about certain non-traditional listings on Realcomp’s website from being distributed to other public real-estate advertising websites.

Here, Rex similarly claims that Zillow and NAR violated Section 1 of the Sherman Act by entering into a horizontal conspiracy to deprive other realtor organizations of competitive posting positions on Zillow’s websites. NAR’s website is already limited to homes listed by its member agents, and the change by Zillow means that a majority of the most popular platforms for viewing listings now only prominently feature NAR-related home listings.

Zillow defended its change as required once it became a participant in an internet data exchange service operated by NAR. According to the complaint, Zillow made the change in part to become an “ibuyer,” and to begin to offer its own real estate agents in select cities. This “instant buying” allows the company to play a larger role in the sale process – and collect larger commissions. Zillow also asserted that, in the alternative, it supports changing the industry rules to allow display of listings from all sources in the same manner.

The complaint against Zillow is a posterchild for the influx of antitrust claims arising from technology-related changes that may impact competition over the past several years. Both private plaintiffs and government regulators alike have taken interest in changes to companies’ internet policies, as well as mergers between web-focused tech companies.

The case will serve as an indicator of courts’ willingness to find liability under a “rule-of-reason” analysis against associations (and members) with rules or standards that arguably “narrow consumer choice”. Any such entities which operate a tech-based platform potentially may face risk of antitrust liability resulting from changes they make that harm competition, and should guide their business decisions accordingly. In particular, companies may wish to consult counsel before making public-facing changes to internet platforms that have a possible byproduct of excluding or reducing the competitive viability of users of the platform. *See Realcomp II*, 635 F.3d at 829-30.

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- **John R. Ingrassia**
Partner