# DOJ sues RealPage for alleged algorithmic pricing antitrust violations

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On August 23, the U.S. Department of Justice (DOJ), joined by North Carolina, California, Colorado, Minnesota, Oregon, Tennessee, and Washington, filed an antitrust lawsuit against RealPage, Inc. in North Carolina.

The DOJ's complaint (https://bit.ly/3XsUn1l) alleges RealPage's Revenue Management Software gathers nonpublic, competitively sensitive data from landlords and uses that data to create algorithms that allow landlords to collaborate on pricing decisions, ultimately increasing rental prices for customers across the country.

## Background

RealPage offers software solutions for the multifamily housing industry. Headquartered in Richardson, Texas, RealPage has seen a number of lawsuits relating to algorithmic pricing in recent years.

*The DOJ alleges RealPage is able to provide pricing recommendations to landlords that artificially increase rental prices.*

In addition to several class action lawsuits, the attorneys general of Washington, D.C. and Arizona have both separately filed suit against RealPage alleging violations of antitrust laws. Now, the DOJ and seven more state attorneys general have filed suit with similar allegations.

## Key allegations

The DOJ's complaint alleges four violations of the Sherman Act. First, it alleges two violations of Section 1 (i) for unlawful information sharing across the conventional multifamily rental housing market and (ii) through vertical agreements with landlords to align pricing.

Second, it alleges two violations of Section 2 for monopolization (and attempted monopolization) of the market for commercial revenue management software used for multifamily housing.

Although styled as separate claims for relief, each alleged violation of law is based on the same underlying factual allegations.

According to the complaint, RealPage's Revenue Management Software is built on information shared by landlords including pricing, future occupancy, and other nonpublic, competitively sensitive information.

*The DOJ also alleges the multifamily rental housing industry is rife with direct coordination among landlords that should be competing with each other.*

Using this information, the DOJ alleges RealPage is able to provide pricing recommendations to landlords that artificially increase rental prices. RealPage also employs multiple mechanisms to ensure landlords actually adopt and follow these price recommendations, including pushing clients to auto-adopt price increases and a "Check and Balance" system designed to pressure landlords to follow the pricing recommendations.

DOJ asserts RealPage has entered into agreements with landlords for the express purpose of sharing competitively sensitive data and that this information sharing has distorted the competitive pricing of apartments.

*This suit represents the latest attempt by the Biden Administration to attack information sharing, an activity that had previously been viewed as having procompetitive virtues.*

The complaint quotes RealPage documents stating "[o]ur tool [] ensures that [landlords] are driving every possible opportunity to increase price even in the most downward trending or unexpected conditions" and "there is greater good in everybody succeeding versus essentially trying to compete against one another in a way that actually keeps the entire industry down."

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The DOJ also alleges the multifamily rental housing industry is rife with direct coordination among landlords that should be competing with each other. The complaint provides several examples of landlords allegedly sharing competitively sensitive information with competitors and colluding on pricing. According to DOJ, RealPage's non-public information sharing encourages this coordination.

Finally, the complaint alleges that RealPage uses the competitively sensitive information it obtains from landlords to maintain a monopoly and exclude competitors from the commercial revenue management software industry.

### Relief sought

The DOJ has asked the court to declare RealPage's actions illegal and enjoin RealPage from continuing these and similar practices.

### Takeaways

This suit represents the latest attempt by the Biden Administration to attack information sharing, an activity that had previously been viewed as having procompetitive virtues, in light of modern pricing tools. This action follows on the heels of similar claims levied by the DOJ against benchmark and competitive intelligence services designed to assist meat processors and human resources professionals.

Notably, the DOJ's complaint is a civil lawsuit and not a criminal action. The DOJ has reportedly been investigating the allegations at issue in the RealPage litigation for some time and even filed a statement of interest in the class action lawsuits in support of the plaintiffs' claims nearly a year ago, a move that was no doubt meant to preserve the potential viability of its own planned action.

That the DOJ has pursued purely civil claims suggests that it has not uncovered any express coordination among landlords that have signed up for RealPage's services, and suggests that even the DOJ acknowledges that RealPage's activities do not involve an agreement among competitors.

The lawsuit does reflect that antitrust and competition authorities continue to show interest in various other forms of sophisticated pricing and benchmarking tools, including algorithmic pricing models. Businesses utilizing sophisticated pricing tools should therefore expect continued scrutiny from enforcement authorities.

### About the authors



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