

## Closing Costs: A Critical Examination of the DOJ’s Proposed *RealPage* Settlement

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Last November, the U.S Department of Justice (“DOJ”) and algorithmic pricing software provider RealPage, Inc. (“RealPage”) signed a proposed settlement agreement that would resolve the DOJ’s price fixing claims against RealPage.<sup>2</sup> According to the DOJ, the agreement “requires RealPage to end the sharing of competitively sensitive information and alignment of pricing among competitors.”<sup>3</sup> These goals are the right ones in theory, and the proposed settlement appears to be aimed at reaching them in practice. But a careful review of the proposed settlement’s terms raises questions about whether it will actually do so. The DOJ should address these questions and, if the proposed settlement is approved, monitor whether it works as intended.

### ***The complaint alleges that RealPage serves as an algorithmic cartel manager.***

RealPage licenses pricing software that makes pricing and occupancy recommendations to landlords of multifamily housing properties. It also provides separate data analytics and benchmarking products allowing users to compare their properties’ performance to others. According to the complaint—which DOJ filed alongside ten state attorneys general—RealPage acquires landlords’ commercially sensitive data through various means and uses that data both to train its pricing models and as an input that its algorithm uses to make pricing recommendations for a given residential floor plan or unit.<sup>4</sup> Although licensees of RealPage’s pricing software can decline to adopt the algorithm’s price recommendations, RealPage makes it difficult and time consuming to do so and encourages them to use an auto-accept feature instead. The widespread adoption of RealPage’s software has increased landlords’ market power and raised rents above the competitive level in local housing markets across the country.

In effect, the DOJ’s complaint describes RealPage as an algorithmic cartel manager, essentially building its business model around a form of algorithmic collusion in which “competitors coordinate pricing decisions by relying on a shared pricing algorithm as an

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<sup>2</sup> Proposed Final Judgment, *United States v. RealPage, Inc.*, No. 1:24-cv-00710-WLO-JLW (M.D.N.C. Nov. 24, 2025).

<sup>3</sup> Dep’t of Just. Off. of Pub. Affs., *Justice Department Requires RealPage to End the Sharing of Competitively Sensitive Information and Alignment of Pricing Among Competitors* (Nov. 24, 2025) <https://www.justice.gov/opa/pr/justice-department-requires-realpage-end-sharing-competitively-sensitive-information-and>.

<sup>4</sup> See generally Amended Complaint, *United States v. RealPage, Inc.*, No. 1:24-cv-00710-WLO-JLW (E.D.N.C. Jan. 7, 2025).

intermediary which collects each competitors' pricing information and sets pricing rules.”<sup>5</sup> As AAI has written elsewhere, competitors' use of the same algorithmic pricing tool threatens to undermine the competitive process in two ways: (1) by allowing competitors to benefit from each other's competitively sensitive information and (2) by implementing a common set of pricing rules.<sup>6</sup> Each function of an algorithmic cartel manager—the collecting of commercially sensitive data and the setting of pricing rules—may restrain competition on its own.

At least in theory, the proposed settlement is aimed at preventing RealPage from serving both of these functions. In its Competitive Impact Statement (“CIS”), the DOJ writes that the proposed settlement “is designed to remedy the loss of competition in the conventional multifamily rental housing markets alleged in the Complaint” by, on the one hand, “significantly limiting RealPage from sharing competitively sensitive, nonpublic information, directly or indirectly, with competing landlords,” and, on the other, preventing it, “from offering software features that would align pricing between competing landlords.”<sup>7</sup>

According to the DOJ, the proposed settlement achieves those goals by imposing three kinds of limits on RealPage's pricing software. First, it “prohibits RealPage from using competing landlords' data in the runtime operation” of its software—that is, using it as an input into its algorithm to recommend prices for a given property.<sup>8</sup> Second, it “prohibits RealPage from using current, forward-looking, or historical nonpublic data” to train its models unless two conditions are met: (1) the data must be “at least 12 months old and not from active leases,” and (2) the models cannot be “used in a manner that restricts or filters nonpublic data by geography” with a specificity less than statewide.<sup>9</sup> Third, the proposed settlement gives licensees more control over how much their rent prices change and prevents RealPage from discouraging licensees from rejecting its recommendations. However, a close reading of the terms of the proposed settlement demonstrates that RealPage will retain significant leeway to collect competitors' nonpublic data and to use it to make recommendations based on a common set of pricing rules.

***The settlement limits RealPage's use—but not its collection—of its licensees' nonpublic data.***

As a general matter, the proposed settlement allows RealPage to continue collecting competing landlords' nonpublic information. RealPage acquires nonpublic data from pricing

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<sup>5</sup> David O. Fisher, *Tacit Agreements to Collude: Enforcing Section 1 of the Sherman Act in the Age of Algorithms*, 40 ANTITRUST 30, 31 (Fall 2025).

<sup>6</sup> See, e.g., Brief for the American Antitrust Institute as Amicus Curiae in Support of Plaintiffs-Appellants, *Gibson v. Cendyn Grp.*, No. 2:23-cv-00140-MMD-DJA, 2024 U.S. Dist. LEXIS 83547 (D. Nev. Oct. 3, 2024); Brief of the American Antitrust Institute as Amicus Curiae in Support of Plaintiffs-Appellants and Reversal, *Cornish-Adebiyi v. Caesars Entertainment, Inc.*, No. 1:23-CV-02536, 2024 U.S. Dist. LEXIS 178504 (D.N.J. Jan. 28, 2025); David O. Fisher, *Cleaning and Sharpening Our Antitrust Tools for the Age of AI*, AM. ANTITRUST INST. (2025), <https://www.antitrustinstitute.org/wp-content/uploads/2025/03/AAI-Commentary-Algorithmic-Pricing.pdf>.

<sup>7</sup> *United States of America et al. v. RealPage, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement*, 90 Fed. Reg. 56286, 56331 (Dec. 5, 2025) (hereinafter “CIS”).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

software licensees, data analytics and benchmarking product users, and market survey participants. Licensees of RealPage’s pricing software agree to give access to their data as part of the licensing agreement. This data is updated nightly and includes both publicly available data—like the number of units a property has publicly listed and the floorplans and advertised rent of those units—and non-public data, including the actual rent being paid after any special deals or discounts, the lease status and expiration date, and the number of potential tenants who have visited a property or submitted a rental application. Licensees can also manually input public or nonpublic data they have acquired about their competitors, which the settlement refers to as Owner Inputted Data. Users of RealPage’s other data analytics and benchmarking tools provide similar data when they use those products. RealPage also conducts market surveys, collecting public and nonpublic data about properties over the phone. Under the settlement agreement, RealPage is prohibited from collecting nonpublic data from market survey participants for use in any product, but it is allowed to continue to collect nonpublic data from pricing software licensees and data analytics and benchmarking product users, including nonpublic Owner Inputted Data that licensees and other users collect on their competitors.

To limit RealPage’s use of nonpublic data, the settlement agreement divides the nonpublic data RealPage collects into two groups, depending on whether it is connected to a Subject Property or an Unaffiliated Property. A Subject Property is defined as a property for which RealPage’s pricing software “provides price recommendations or prices.”<sup>10</sup> An Unaffiliated Property is defined as a property whose owner is different than the owner of a Subject Property.

The agreement also distinguishes between the two ways that RealPage uses nonpublic data in its software: for Model Training and for Runtime Operation. Model Training involves using the data to improve the accuracy of the algorithm’s predictions. Runtime Operation involves using the data as an input that the algorithm draws upon to generate recommended prices. As a general matter, the agreement prohibits RealPage from using Unaffiliated Property Data in the Runtime Operation of its algorithm, but it allows RealPage to use that data in Model Training so long as the data is at least 12 months old and cannot be used to identify geographic effects at a level of granularity that is more specific than statewide.

In theory, the agreement is a step forward in addressing some of the harms alleged in the complaint. However, questions remain about its efficacy in practice—questions involving both of the two key functions of an algorithmic cartel manager. First, regarding RealPage’s collection of competitors’ pricing information,<sup>11</sup> the scope and quantity of Owner Inputted Data that RealPage may collect and deploy remains unclear, and there is some ambiguity about whether RealPage may continue to use the real-time data of all licensees as an input to make price recommendations to any one licensee. Second, regarding RealPage’s ability to set pricing rules,<sup>12</sup> it is unclear whether RealPage may continue to recommend supracompetitive prices to competitors, whether such recommendations can raise market prices even when they are not accepted, and whether the temporal and geographical limits on RealPage’s Model Training data will meaningfully constrain

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<sup>10</sup> Proposed Final Judgment, *supra* n.2 at 9.

<sup>11</sup> See Fisher, *Tacit Agreements to Collude*, *supra* n.5 and accompanying text.

<sup>12</sup> See *id.*

RealPage as a practical matter. The DOJ must address these questions so that renters and the public can properly evaluate the settlement's efficacy.

***RealPage can continue to make pricing recommendations to landlords based on their competitors' data.***

In its CIS, the DOJ writes that, “[s]ubject to limited exceptions, RealPage will not be allowed to use nonpublic data from competing properties” to make price recommendations.<sup>13</sup> One such exception is Owner Inputted Data, a broad category that includes any data about an Unaffiliated Property input by a licensee or user, and which RealPage can continue to use in both Model Training and Runtime Operation. The scope and quantity of this data is unclear, but it may be competitively significant: the complaint describes an industry in which local markets are highly concentrated and landlords regularly share pricing information and strategies. Without an explanation as to why this exception is “limited,” as the CIS claims, it is hard to see how it would not swallow the rule. In a market dominated by a small handful of commercial landlords, one landlord can gather his competitors' future lease projections and input them into RealPage's software during runtime, allowing RealPage to use the forward-looking, nonpublic pricing data of all of the competitors in a given market to make pricing recommendations. To be sure, information sharing among competitors may itself give rise to an independent violation of the antitrust laws, but it is unclear whether the DOJ can effectively police local markets for individual information-sharing violations that are beyond the scope of the settlement agreement.

In addition, an ambiguity in the language of the proposed settlement may permit an interpretation that would allow a different, even larger exception to swallow the rule. Paragraph IV.A.1 requires RealPage to “cease using current or historical Unaffiliated Property Data in the Runtime Operation” of its pricing software.<sup>14</sup> As worded, this provision can have one of two plausible interpretations. The first is reasonably consistent with DOJ's stated goals but requires a drastic reordering of RealPage's business model. Under this interpretation, a “Subject Property” can only be one property at any given time—the property to which RealPage's software is currently providing price recommendations in a given Runtime Operation. An “Unaffiliated Property” is any other property which does not have the same owner as that one Subject Property. This interpretation is consistent with the goals of the proposed settlement in that it prevents RealPage from using nonpublic data from one licensee as an input to provide price recommendations to another. Instead, it allows RealPage to use as an input only data from (1) that one Subject Property, (2) any other property owned by the same landlord, and (3) any Owner Inputted Data that the landlord has collected on its own.

The second interpretation is inconsistent with the goals of the proposed settlement but it requires less drastic changes to RealPage's business model because it allows RealPage to use all licensees' data as an input. Under this interpretation, “Subject Property” refers to *any and all* properties to which RealPage provides price recommendations, and “Unaffiliated Property” covers only those properties for which RealPage does not provide pricing recommendations—*i.e.*, only those properties that are not owned by *any* licensee of RealPage's pricing software. If that is the case, Paragraph IV.A.1 prohibits RealPage only from inputting nonpublic data about

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<sup>13</sup> CIS, *supra* n.7 at 56330.

<sup>14</sup> Proposed Final Judgment, *supra* n. 2 at 11.

properties owned by non-licensees, such as data collected from users of RealPage’s data analytics and benchmarking tools. RealPage would still be free to use data from *all* of its software licensees as an input to make price recommendations to *each* of them. This would mean the settlement does almost nothing to remedy the harm alleged in the complaint, as RealPage would be permitted to continue telling its licensees how to price based on the real-time prices of their competitors, so long as those competitors are also licensees.

Other portions of the agreement suggest that the first interpretation is the proper one. The agreement defines “Unaffiliated Property Data” as data “belonging to individual Property Owners of multiple Subject Properties that together constitute Unaffiliated Properties.”<sup>15</sup> The fact that “multiple Subject Properties” may “together constitute Unaffiliated Properties” suggests that “Subject Property” refers only to the individual property at issue in a particular Runtime Operation. But this observation creates more questions than it answers. If only one property at a time is the “Subject Property” with respect to the data that RealPage may permissibly use as an input in making price recommendations for that property, what is the meaning of the plural term “Subject Properties” in this definition, and what is the distinction between “*a* Subject Property” and “*the* Subject Property” as those terms are used throughout the agreement?

Resolving this ambiguity matters because RealPage will be incentivized to adopt the most favorable possible interpretation of the settlement language. As illustrated by the DOJ’s struggle to enforce the terms of its 2010 settlement with Ticketmaster, which the DOJ considered “clear and unambiguous,”<sup>16</sup> this is true even if the interpretation is clearly inconsistent with the goals of the agreement. To ensure that RealPage cannot evade its commitments under the proposed settlement and to allow the public to accurately gauge the agreement’s effectiveness, the DOJ must resolve this ambiguity or otherwise clarify the meaning of the agreement’s language.

***Notwithstanding the agreement’s limitations on data use, RealPage can continue to set common pricing rules for landlords.***

Beyond merely collecting and sharing data, algorithmic cartel managers develop shared pricing rules that, when followed, allow competitors to coordinate pricing decisions. Competitors’ shared use of pricing rules can violate the antitrust laws even if those rules are not based on shared data.

In its CIS, the DOJ asserts that the proposed settlement is guided by “the principle that firms should not make pricing decisions using insight drawn from their competitors’ nonpublic,

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<sup>15</sup> *Id.* at 10.

<sup>16</sup> Motion to Modify Final Judgment at 3, 11, *United States v. Ticketmaster Ent., Inc.*, No. 1:10-cv-00139-RMC (D.D.C. Jan. 8, 2020) (seeking, ten years after settlement, modification to “clarify and strengthen” terms prohibiting Live Nation from threatening to condition the provision of events to a venue based on the venue’s refusal to contract with Ticketmaster) (hereinafter “*Ticketmaster* Motion to Modify”); Dave Brooks, *How Live Nation Reached a Settlement with the DOJ in the Consent Decree Investigation*, BILLBOARD, (Jan. 10, 2020) <https://www.billboard.com/music/music-news/live-nation-doj-settlement-avoid-contempt-charges-8547798/> (detailing Live Nation’s position that “[t]elling a venue that their Live Nation show count could drop if a venue went with a competitor is not a threat” that violated the terms of the 2010 decree).

competitively sensitive data,” but it says nothing about whether and how the agreement prohibits RealPage from developing and implementing shared pricing rules notwithstanding the limits on the data it can use.<sup>17</sup> Specifically, nothing in the CIS explains how the agreement prevents RealPage from continuing to recommend above-market prices to licensees or why, knowing that their competitors are also likely to be receiving similarly inflated recommendations, licensees will not correspondingly raise their prices frequently enough to raise market prices above the competitive level. For example, RealPage could recommend an arbitrary 20% price increase to all its licensees in a given market and, knowing that their competitors are likely receiving similar recommendations, licensees could safely adopt a 10% increase. This would have the effect of raising market prices above the competitive level even without the use of any nonpublic data.

One way to limit RealPage’s ability to coordinate pricing decisions is to limit its ability to enforce its recommendations. To this end, the agreement requires RealPage to amend its software features to give users more control over price changes and prohibits RealPage from discouraging users from rejecting its recommendations. But the complaint makes clear that the acceptance rate does not need to be high in order for RealPage’s recommendations to affect market prices. Because landlords may be influenced by the recommended price even when they do not accept it, the spread between a recommendation and the actual final price is a more useful measure of the software’s influence on prices than the binary choice between accepting and not accepting a recommendation. The proposed settlement does not account for the significance of this spread.

Furthermore, even absent RealPage’s efforts to increase acceptance rates, the DOJ’s complaint explains how landlords understand that it is in their common interest to adopt RealPage’s recommendations because, by making price recommendations to each competitor based on the same set of pricing rules, RealPage’s software has “the likely effect of aligning users’ pricing processes, strategies, and pricing responses.”<sup>18</sup> In light of these realities, it is unclear whether the changes that the agreement imposes on RealPage’s software features will actually prevent prices from increasing above the competitive level. The CIS does not explain why tenants and the public should expect it will do so.

RealPage’s continued ability to make price recommendations to licensees based on a common set of pricing rules also calls into question the effectiveness of the agreement’s limitations on what data RealPage can use in Model Training. The agreement prevents RealPage from training its models on data that is less than twelve months old, a restriction that the DOJ asserts will “minimiz[e] any competitive concerns related to the use of . . . nonpublic information to determine how the models are trained.”<sup>19</sup> It also prevents RealPage from training its models on data that may identify geographic effects at a granularity more specific than statewide. Because “states tend to be larger than the largest local [housing] market,” the DOJ maintains that this limitation will allow RealPage to continue using state and regional variables to train its pricing models with minimal anticompetitive effect.<sup>20</sup>

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<sup>17</sup> CIS, *supra* n.7 at 56330.

<sup>18</sup> Amended Complaint, *supra* n.4 at 98.

<sup>19</sup> CIS, *supra* n.7 at 56333.

<sup>20</sup> *Id.* at 56332.

These terms appear to undermine the argument, made by some proponents of algorithmic pricing, that the technology can have procompetitive effects by allowing firms to react more quickly to changing market conditions. Some empirical evidence demonstrates that a high penetration of algorithmic pricing is associated with a quicker downturn in prices during periods of low predicted demand.<sup>21</sup> Because real estate markets are local and price trends can shift quickly over time, preventing RealPage from training its models on up-to-date, localized data would appear to reduce the models' ability to reliably predict periods of low demand in a given market. To the extent these limits on training data are effective, they call into question why RealPage would be willing to accept them, as they are likely to make its product less reliable at predicting demand.

One answer may be that RealPage is willing to accept these limits on training data because it knows a way around them. Under the agreement, RealPage can continue to use up-to-date, localized, and granular data to train its models so long as that data is “readily accessible to the general public.”<sup>22</sup> This narrow limitation allows RealPage to combine the year-old, nonpublic data of its licensees—anonimized to the state level—with more recent and locality-specific data from other sources. Such sources might include the U.S. government, which collects and publishes data on new construction, vacancy rates, unit availability, and prices,<sup>23</sup> and companies like Zillow, which provides granular, monthly data on rental prices, inventory levels, and local trends.<sup>24</sup> Considering the sophistication of RealPage's models and the large amount of public and nonpublic data it can use for Model Training, it is not clear whether and how the agreement's limitations on training data will prevent RealPage from continuing to set pricing rules which have the effect of raising prices.

***The DOJ should clarify the proposed settlement and monitor its effectiveness.***

As the use of pricing algorithms continues to shape the economy, enforcers and judges have struggled to set effective guardrails that allow pricing software providers to continue operating in a way that does not unduly restrain competition and harm consumers. The DOJ's proposed settlement with RealPage is an important test case of those guardrails. If approved, the settlement is likely to serve as a model to guide future agreements. It may also be used by other algorithmic pricing software providers to make decisions about what features are permissible as a matter of antitrust law.<sup>25</sup> The stakes are high, and the DOJ and the court should ensure that the

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<sup>21</sup> Fisher, *Tacit Agreements to Collude*, *supra* n.5 at 30; Sophie Calder-Wang & Gi Heung Kim, *Algorithmic Pricing in Multifamily Rentals: Efficiency Gains or Price Coordination?* 30, 57 (Aug. 16, 2024) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4403058](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4403058).

<sup>22</sup> Proposed Final Judgment, *supra* n. 2 at 8.

<sup>23</sup> See U.S. Census Bureau, *Housing Topics: Multifamily Housing*, [https://www.census.gov/topics/housing/guidance/topics.html#par\\_textimage\\_842642108](https://www.census.gov/topics/housing/guidance/topics.html#par_textimage_842642108).

<sup>24</sup> See Zillow, *Housing Data: Rentals & Rental Forecasts*, <https://www.zillow.com/research/data/>.

<sup>25</sup> Cf. Dep't of Just. Off. of Pub. Affs., *Justice Department Updates 2015 Business Review Letter to the Institute of Electrical and Electronics Engineers* (Sept. 10, 2020)

<https://www.justice.gov/archives/opa/pr/justice-department-updates-2015-business-review-letter-institute-electrical-and-electronics> (noting previous business review letter had “been misinterpreted, and cited frequently and incorrectly, as an endorsement of the IEEE's Patent Policy,” and updating letter to provide “enforcement transparency to companies and

terms of the agreement are unambiguous, well-documented, fully explained, and effective at achieving its stated goals.

To this end, the DOJ should explain how the individual terms of the agreement serve to prevent RealPage from coordinating the exchange of data and setting common pricing rules. With respect to the exchange of data, the DOJ should specify the quantity and scope of the Owner Inputted Data that RealPage is allowed to use in its Runtime Operations, and explain why such a use of competitor data is consistent with the goals and principles laid out in the CIS. It should also resolve the ambiguity or otherwise clarify the meaning of Paragraph IV.A.1 as explained in this commentary. If necessary, it should amend Paragraph IV.A.1 and the definitions of “Subject Property,” “Unaffiliated Property,” and “Unaffiliated Property Data” and any other provisions necessary to resolve any ambiguity or confusion.

With respect to the coordination of pricing rules, the DOJ should explain how the agreement will prevent RealPage from continuing to facilitate anticompetitive price coordination notwithstanding its limits on the use of certain data, particularly with respect to RealPage’s continued ability to recommend above-market prices to its licensees. It should explain how, considering its allegations that RealPage’s price recommendations raise market prices even when they are not accepted, the provisions regarding software features will serve to prevent RealPage from raising market prices. It should also explain how the agreement prevents RealPage from continuing to develop and implement collusive pricing rules, particularly in light of the sophistication of RealPage’s models and its ability to supplement training data with granular, up-to-date, location-specific public data.

Finally, to the extent the settlement agreement is approved and implemented, the DOJ should immediately move to appoint a monitor with the necessary expertise to ensure that RealPage complies with both the letter and the spirit of its terms. The DOJ should also continue to monitor rental prices in the affected markets listed in the complaint to ensure that the limitations on RealPage’s conduct effectively prevent it from raising rental prices above the competitive level. The DOJ has previously sought to modify and extend settlement agreements when hindsight proves that they were insufficient to ameliorate harm to competition.<sup>26</sup> If such monitoring suggests that RealPage continues to serve as an algorithmic cartel manager in the relevant markets, the DOJ should reopen the matter and/or modify its decree accordingly.

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organizations wishing to gain valuable insight into the department’s prospective enforcement views”).

<sup>26</sup> See, e.g., *Ticketmaster* Motion to Modify, *supra* n.16, at 3 (seeking, ten years after settlement agreement and entry of final judgment, to strengthen and extend the agreement “to work as intended and promote competition in the primary ticketing industry”).