Presentation before the SF Board of Supervisors, Land Use & Transportation Committee:

File No. 240766 – Ban on Automated Rent Setting

Lee Hepner, Senior Legal Counsel

What is “automated rent setting” or “AI revenue management”?

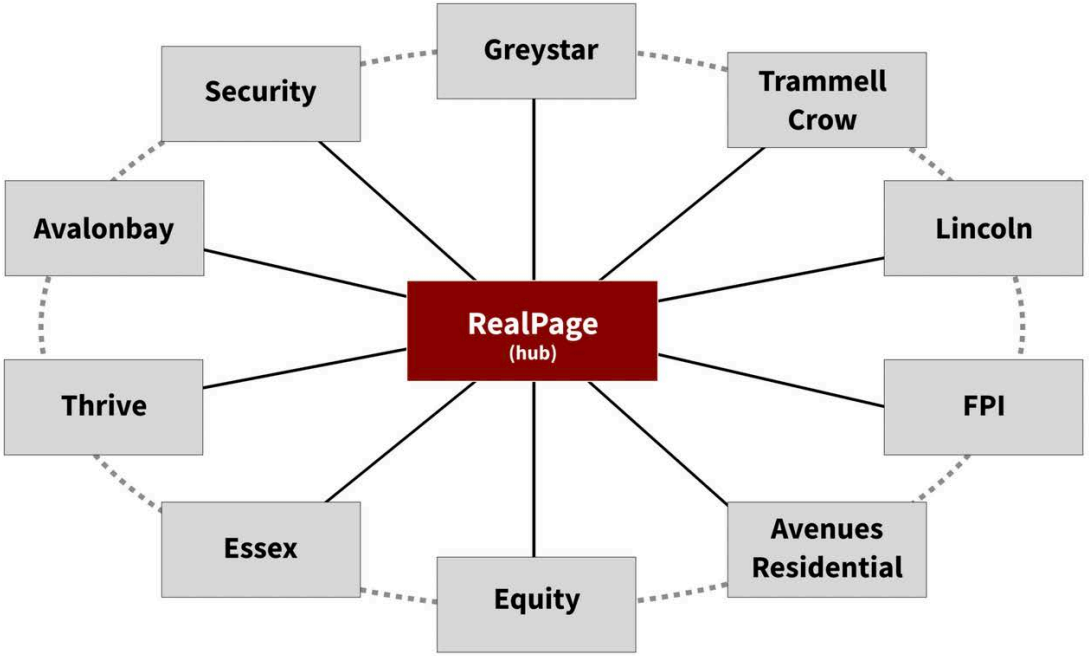
- Landlords delegate their rental price and supply decisions to a common decisionmaker
- Landlords who should ordinarily be competing with each other as to price share data with a common decisionmaker, and the common decisionmaker provides “daily pricing and ongoing revenue oversight”
- Rather than function as separate economic entities, participating landlords make key competitive decisions regarding the price and supply of multifamily apartments collectively

What is “automated rent setting” or “AI revenue management”?

“[W]e are all technically competitors . . . [but RealPage] helps us to work together . . . to make us all more successful in our pricing . . . [RealPage] is designed to work with a community in pricing strategies, not work separately . . . we rarely make any overrides to the [pricing] recommendations . . .”

With this software, owners used live dynamic pricing that updates regularly, based on a model trained on a large dataset of over ***16 million units***. The software is also improving as new property managers are added to their list of clients, and is currently responsible for the pricing of ***8% of all rentals units*** nationwide.

“Hub and Spoke” Price Fixing:



Non-public, competitively-sensitive data:

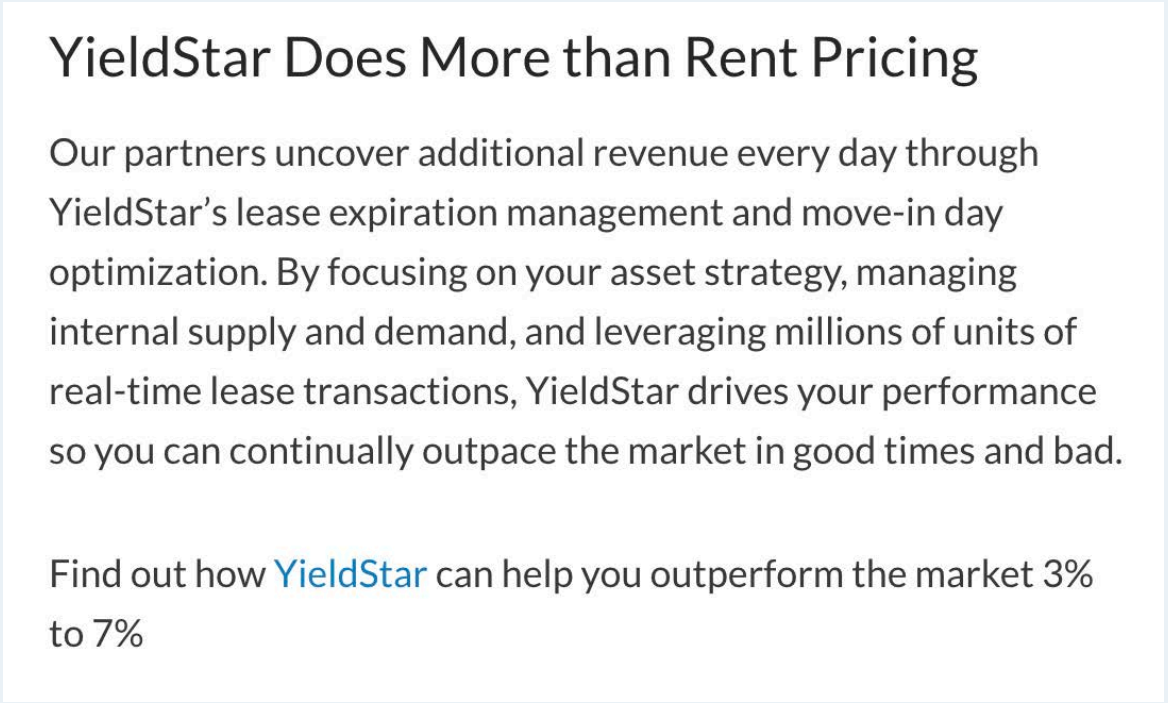
- **The sharing of nonpublic, sensitive pricing and supply data is against a competitor's economic self-interest, *unless they know they are receiving in return the benefits of their competitors' data***

its competitors. (See, e.g., Doc. No. 530 ¶¶ 31, 287, 289). In doing so, RealPage would make true its vow to its RMS clients to "outperform the market," primarily by increasing rent prices. It would clearly not be in any individual Defendant's economic self-interest to contribute its data to RealPage without knowing that it would benefit from its horizontal competitors doing the same. Put another way, the contribution of sensitive pricing and supply data for use by RealPage to recommend prices for competitor units is in Defendants' economic self-interest if and only if Defendants know they are receiving in return the benefit of their competitors' data in pricing their own units. While Defendants

***Source:** In re RealPage, Inc., Rental Software Antitrust Litig. (No. II)*, **No. 3:23-MD-03071, 2023 WL 9004806, at *15 (M.D. Tenn. Dec. 28, 2023)**

Price setting algorithms increase rents, restrict supply, and increase eviction rates.

Price setting algorithms increase rents.



YieldStar Does More than Rent Pricing

Our partners uncover additional revenue every day through YieldStar's lease expiration management and move-in day optimization. By focusing on your asset strategy, managing internal supply and demand, and leveraging millions of units of real-time lease transactions, YieldStar drives your performance so you can continually outpace the market in good times and bad.

Find out how YieldStar can help you outperform the market 3% to 7%

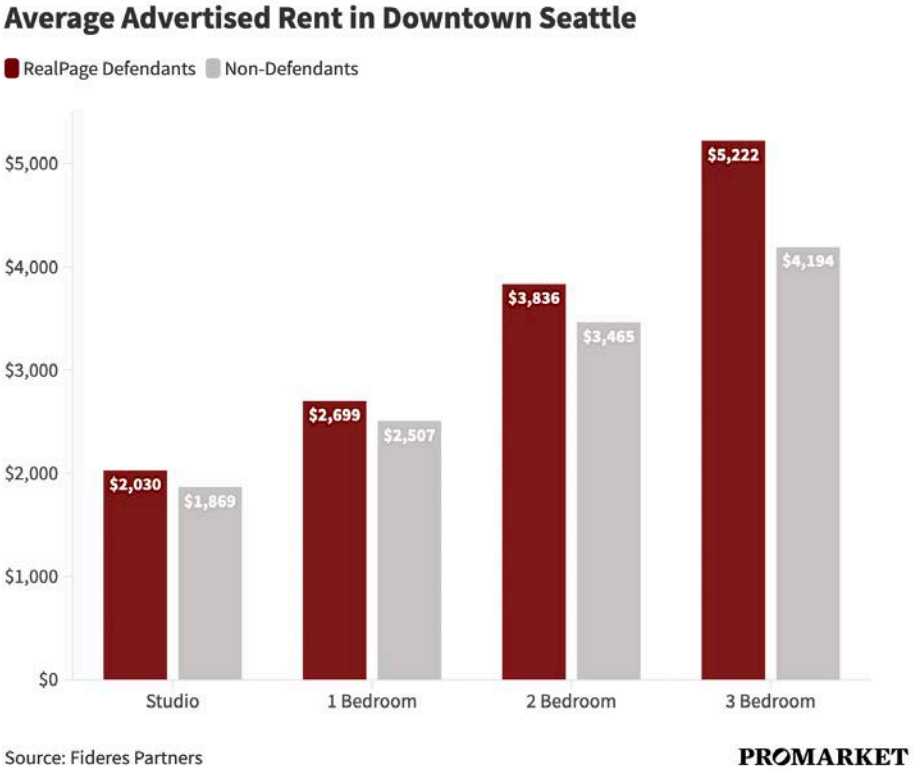
Source: https://www.realpage.com/videos/yieldstar-helps-top-nmhc-companies/

Price setting algorithms increase rents.

239. Here, the SSNIP test is satisfied, and the market is properly defined. As described above and below, pursuant to the Lessors' agreement not to compete on price, Lessors are able to increase rents "year over year, between 5% and 12% in every market," yet those increases have not driven enough renters out of the market such that the SSNIP has become unprofitable to Lessors. Because Lessors are able to increase prices by a SSNIP without losing sufficient sales to render the increase unprofitable, the Multifamily Rental Market is properly defined.

Source: In re RealPage Antitrust Litigation (Multi-District Class Action), Middle District of Tennessee, Case No. 3:23-md-03071

Price setting algorithms increase rents.

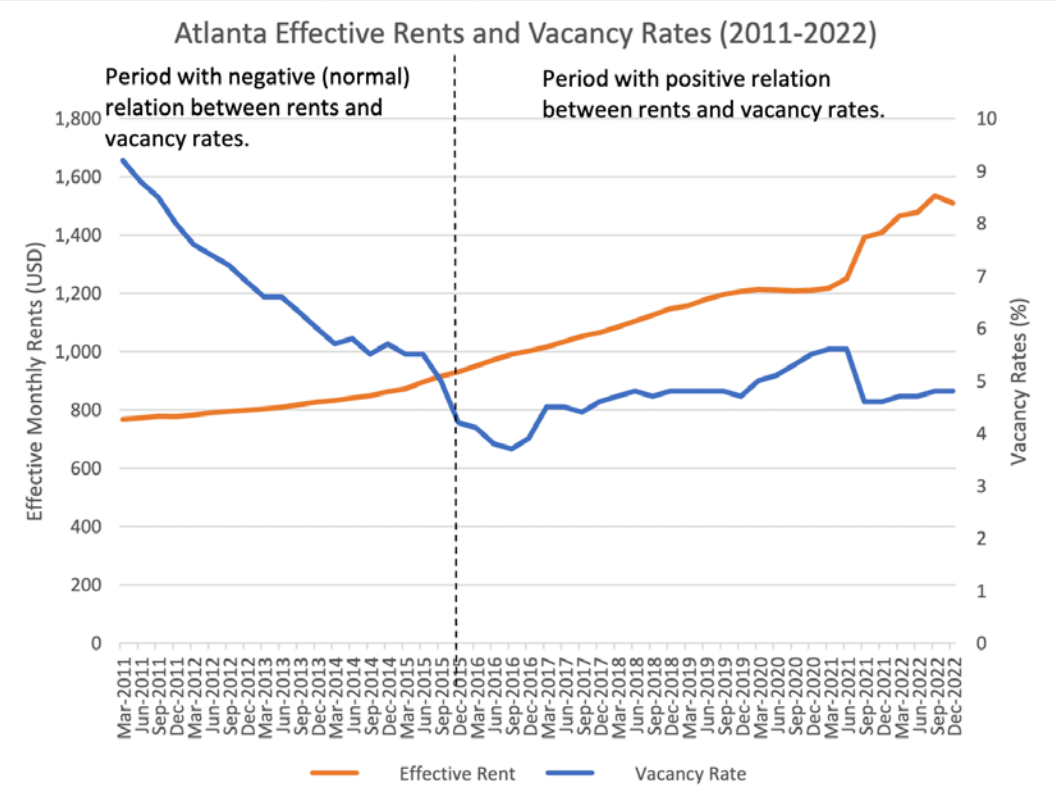


Price setting algorithms restrict supply.

“My generation grew up worshipping the occupancy gods. We learned that if you were not 95 percent-plus occupied, the asset was failing. But that's not necessarily true anymore.” – Landlord operator, quoted

19. Defendant RealPage has not been shy about its desire to raise vacancy rates. During a 2017 earnings call, then-CEO of RealPage, Steve Winn, described how one large client, managing over 40,000 units, drastically increased its profit by operating at a vacancy rate that “would have made [that property manager’s] management uncomfortable before.”[21] The client had previously targeted 97% or 98% occupancy rates in markets where it was a leader. After outsourcing rent prices and lease terms to RealPage, the company began targeting 3%-4% revenue growth while operating at a 95% occupancy rate (*i.e.*, 5% vacancy rate).[22]

Price setting algorithms restrict supply.



Price setting algorithms increase eviction rates.

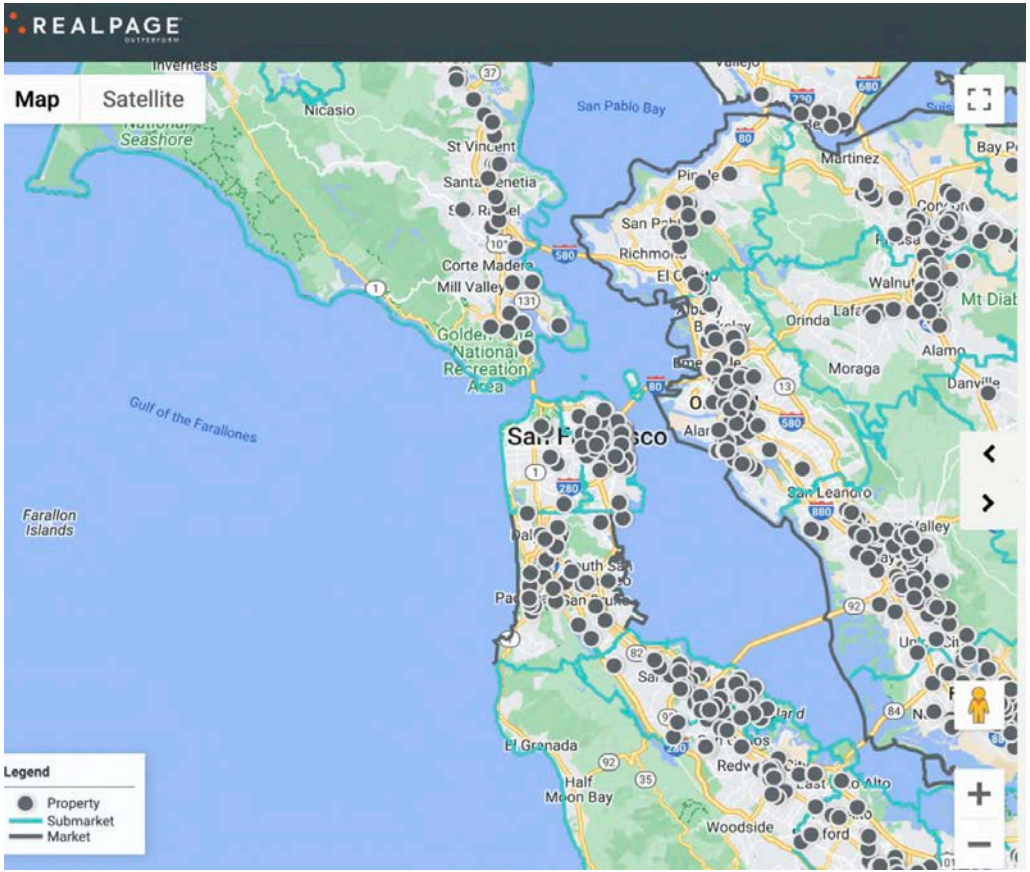
"One lessor defendant has acknowledged that adopting this pricing increased turnover rates by 15 percentage points—meaning tenants had to find new apartments because of these above-market price increases. But as the lessor defendant's CEO observed, the 'net effect' of RealPage's software 'pushing people out' was an additional '$10 million in income.'"

(Source: State of Arizona v. RealPage, Inc., et al., Superior Court of Arizona, accessible online: https://www.azag.gov/sites/default/files/2024-02/RealPage%20Complaint.pdf)

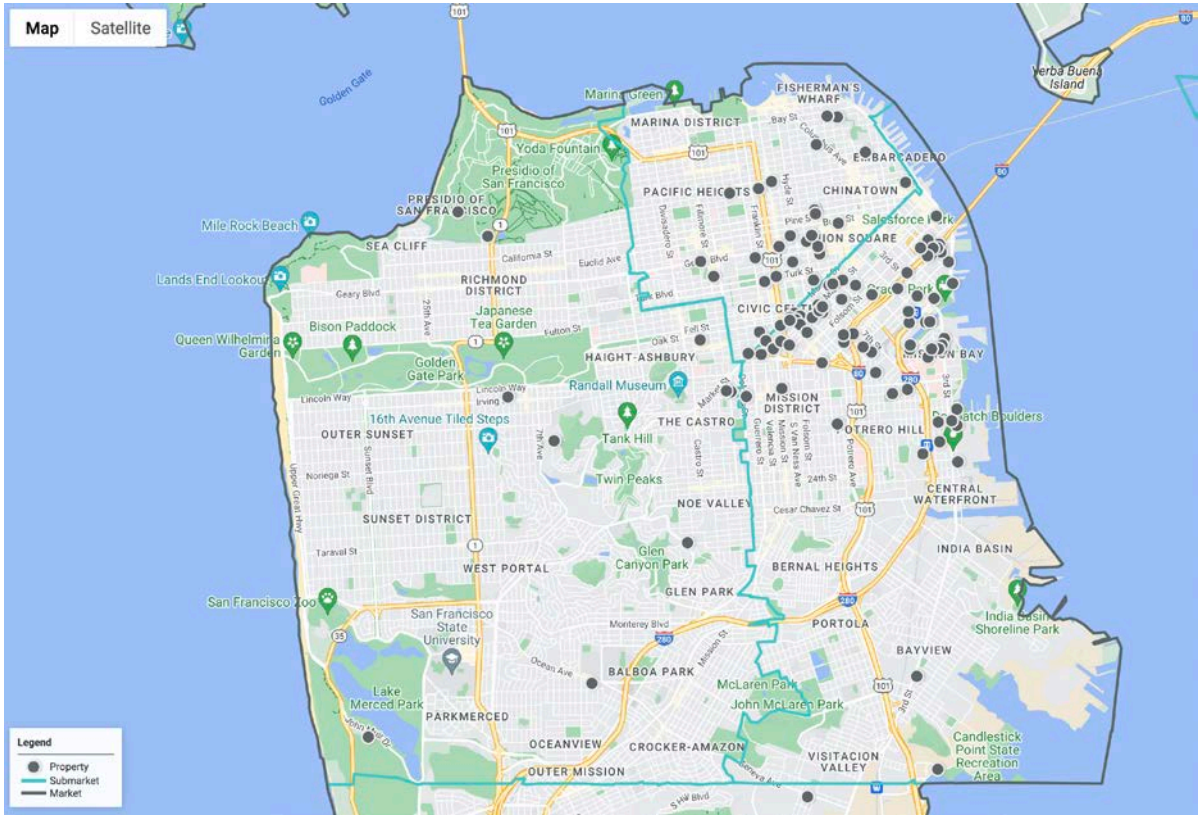
Price setting algorithms increase eviction rates.

134. RealPage also encouraged its clients, including Lessor Defendants, to abandon other traditional market share maximizing practices, such as keeping low turnover rates. Ric Campo, the CEO of Defendant Camden, admitted that Camden's turnover rates increased around 15 percentage points in 2006 after implementing YieldStar. Despite that increase in turnover rates, Defendant Camden's overall same-property revenue grew over 7% in its first year using YieldStar. "What we found," Campo said, "was that driving our turnover rate up actually captured additional revenue."[74] While Defendant Camden's turnover expenses increased by $2.5 million, revenue increased $12.5 million. According to Campo, "[T]he net effect of driving revenue and pushing people out was $10 million in income."[75]

Market Penetration in San Francisco

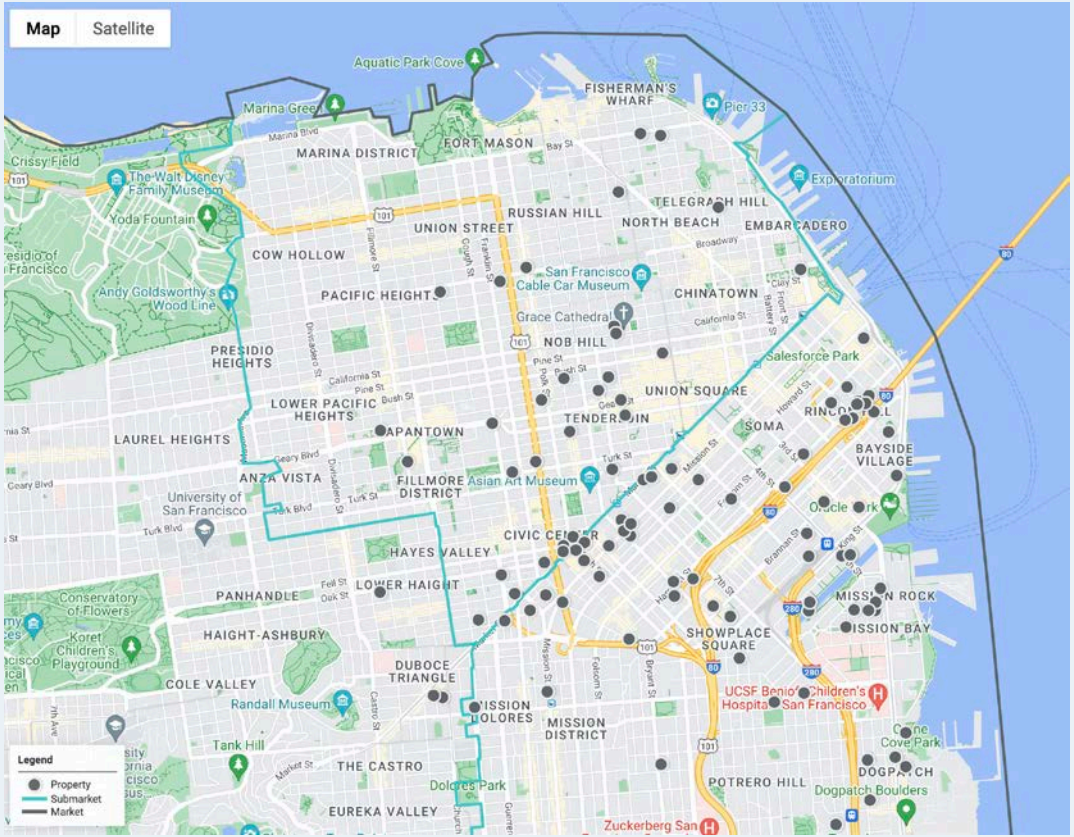


Market Penetration in San Francisco



Source: www.realpage.com/explore

Market Penetration in San Francisco



Source: www.realpage.com/explore

San Francisco Landlords Accused of AI Rent Fixing

The following landlords are named defendants in federal litigation:

- Brookfield Properties Multifamily LLC: 76 buildings in San Francisco, 2,100 units in recently-purchased Veritas portfolio
- Greystar Management Services, LP: 44 buildings in San Francisco
- Equity Residential: 43 buildings in San Francisco, approx. 11,667 units, estimated 15% net operating income
- AvalonBay Communities, Inc.: 14 buildings in San Francisco, approx. 3,385 units
- UDR, Inc.: 14 buildings in San Francisco, approx. 3,309 units
- FPI Management, Inc.: 10 buildings in San Francisco
- Essex Property Trust, Inc.: 5 buildings in San Francisco

Source: Various 10-K filings.

Low Market Penetration Can Still Cause Harm

- Even low market penetration (e.g., 5%) can suggest high levels of market manipulation (up to 70% of certain sub-markets)
- Housing market striation (e.g., Class A, Class B, Class C properties; multi-family v. single family home units) can obscure the extent of market penetration
- Market manipulation can have “spillover effects” into other building typologies
- The cost of moving from one apartment to another (“switching costs”) can enhance the market power of a landlord to manipulate prices
- Consolidation of rental housing ownership – and common ownership of rental housing – obscures extent of price fixing schemes

Enforcement Actions:

Arizona Attorney General
Kris Mayes

Attorney General Mayes Sues RealPage and Residential Landlords for Illegal Price-Fixing Conspiracy

Wednesday, February 28, 2024

PHOENIX – Attorney General Kris Mayes today announced a lawsuit against RealPage, Inc. and nine major residential apartment landlords operating in Arizona for conspiring to illegally raise rents for hundreds of thousands of Arizona renters in the Phoenix and Tucson metro areas. RealPage is a software company that offers what it calls "revenue management" to its clients, including those named as its co-defendants in this lawsuit.

Office of the Attorney General for the District of Columbia

MENU

Newsroom

Attorney General Schwalb Sues RealPage & Residential Landlords for Rental Price-Fixing, Illegally Raising Thousands of District Residents' Rents

November 1, 2023

Lawsuit Alleges that 14 of DC's Largest Landlords Coordinated Through RealPage's Centralized Price-Setting Algorithm to Artificially Inflate Rent Prices

AJC News

Subscribe

Metro Atlanta | Georgia News | Legislature | National & World News | Business | 2024 Ele

METRO ATLANTA

FBI raid thrusts antitrust claims against Atlanta landlords into spotlight

A Texas-based tech company is accused of colluding with management companies and landlords to artificially inflate the price of rents.

Reuters

My News

Litigation | Antitrust | Real Estate | Litigation

RealPage antitrust lawsuits over rent prices consolidated in Tennessee

By Mike Scarcella

April 10, 2023 1:55 PM PDT · Updated a year ago

AMERICAN ECONOMIC LIBERTIES PROJECT

Federal Legislative Efforts:

Wyden and Welch Introduce Legislation to Crack down on Companies that Inflate Rents with Price-Fixing Algorithms

Senators Klobuchar, Sanders, Hirono, Butler, Merkley and Blumenthal Cosponsor the Preventing the Algorithmic Facilitation of Rental Housing Cartels Act to Speed Up Enforcement Against Companies That Allow Landlords to Collude on Rent Increases

Klobuchar, Colleagues Introduce Antitrust Legislation to Prevent Algorithmic Price Fixing

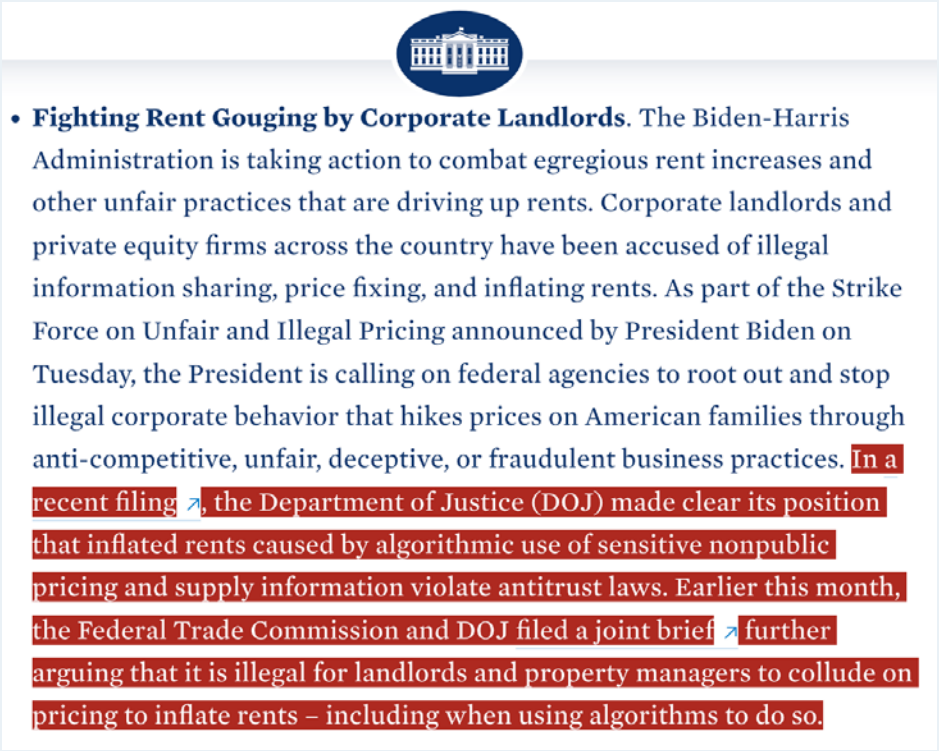
February 2, 2024

WASHINGTON - U.S. Senator Amy Klobuchar (D-MN), Chairwoman of the Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights, along with Senators Ron Wyden (D-OR), Dick Durbin (D-IL), Peter Welch (D-VT), Mazie Hirono (D-HI), and Richard Blumenthal (D-CT), introduced the *Preventing Algorithmic Collusion Act* to prevent companies from using algorithms to collude to set higher prices.

Reps. Becca Balint and Jesús "Chuy" García Introduce Legislation to Crack Down on Companies Exacerbating Rental Housing Crisis Through Price-Fixing Algorithms

Washington, June 6, 2024

The White House Makes Algorithmic Price Fixing a Priority:



- **Fighting Rent Gouging by Corporate Landlords**. The Biden-Harris Administration is taking action to combat egregious rent increases and other unfair practices that are driving up rents. Corporate landlords and private equity firms across the country have been accused of illegal information sharing, price fixing, and inflating rents. As part of the Strike Force on Unfair and Illegal Pricing announced by President Biden on Tuesday, the President is calling on federal agencies to root out and stop illegal corporate behavior that hikes prices on American families through anti-competitive, unfair, deceptive, or fraudulent business practices. In a recent filing, the Department of Justice (DOJ) made clear its position that inflated rents caused by algorithmic use of sensitive nonpublic pricing and supply information violate antitrust laws. Earlier this month, the Federal Trade Commission and DOJ filed a joint brief further arguing that it is illegal for landlords and property managers to collude on pricing to inflate rents – including when using algorithms to do so.

Source: The White House, "President Biden Announces Plan to Lower Housing Costs for Working Families"

State and Local Lawmakers Can Act!

Source: *http://www.economicliberties.us/wp-content/uploads/2024/03/Policy-Memo-Rent-Setting-Software-Algorithms.pdf*

Thank you!

Lee Hepner
Senior Legal Counsel
Lhepner@economicliberties.us