DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. RealPage, Inc. et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that the Response of Plaintiff United States to Public Comment on the Proposed Final Judgment in *United States of America et al.* v. *RealPage et al.,* Civil Action No. 24–cv–00710–WLO–JLW, in regards to Defendant Cortland Management, LLC., has been filed in the United States District Court for the Middle District of North Carolina, together with the response of the United States to the comment.

Copies of the public comment and the United States' Response are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr.*

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

In the United States District Court for the Middle District of North Carolina

United States of America, Plaintiff, vs. *Cortland Management, LLC,* Defendant.

No. 1:24–cv–00710–WLO–JLW

Response of Plaintiff United States to Public Comment on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States submits this response to the one public comment received regarding the proposed Final Judgment in this case as to Defendant Cortland Management, LLC (Doc. 49–1).

After careful consideration of the submitted comment, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint against Cortland and is therefore in the public interest.

After this Response has been published in the **Federal Register**, pursuant to 15 U.S.C § 16(d), the United States will move that the Court enter the proposed Final Judgment.

I. Procedural History

On August 23, 2024, the United States and eight states (''Plaintiffs'') filed a civil antitrust Complaint against RealPage, Inc. (''RealPage'') (Doc. 1). On January 7, 2025, Plaintiffs amended their civil Complaint (the ''Complaint'') to add Cortland Management, LLC (''Cortland'') and five other landlords as Defendants (Doc. 47) alleging that Cortland Management, LLC's (''Cortland'') agreements with RealPage and other landlords to share information and align pricing violate Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks to enjoin Defendants from sharing and exploiting competitively sensitive data.

Along with the amended Complaint, the United States filed a proposed Final Judgment (Doc. 49–1) as to Cortland, which is designed to remedy the loss of competition alleged in the Complaint due to Cortland's conduct, and a Stipulation and Proposed Order (Doc. 49), in which Cortland consented to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act.[1] On January 23, 2025, the United States filed a Competitive Impact Statement describing the proposed Final Judgment as to Cortland. (Doc. 63)

The United States arranged for the publication of the Complaint, proposed Final Judgment, and Competitive Impact Statement in the **Federal Register** on January 30, 2005, see 15 U.S.C. 16(b)–(c); 90 FR 8560 (January 30, 2025), and caused notice regarding the same, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in the *Washington Post* from January 29 to February 4, 2025, and in the *Greensboro News and Record* from January 29 to February 3, 2025, and on March 1, 2025. The 60-day period for public comment has now ended. The United States received one comment in response, which is described below and attached as Exhibit 1 hereto.

II. Standard of Judicial Review

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in cases brought by the United States under the antitrust laws be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the Court's inquiry is necessarily a limited one, because the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable''); *United States* v. *Keyspan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011); *see SEC* v. *Citigroup Global Markets Inc.,* 673 F.3d 158, 168 (2d Cir. 2012) (''We are bound in such matters to give deference to an executive agency's assessment of the public interest.'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62; *United States* v. *Apple, Inc.,* 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012) (citing *Microsoft,* 56 F.3d at 1458, 1461–62). With respect to the adequacy of the relief secured by the decree, a court may ''not make de novo determination of facts and issues.''

[1] The Stipulation and Proposed Order, and the proposed Final Judgment, pertain only to Cortland's conduct. They do not propose to resolve the anticompetitive conduct alleged in the Complaint against any other Defendant. Nor do they resolve the claims of any other Plaintiff besides the United States.

United States v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the flexibility of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*[2]

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). In determining whether a proposed settlement is in the public interest, a district court ''is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable.'' *United States* v. *Morgan Stanley,* 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012) (quoting *United States* v. *Abitibi–Consol. Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008)). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (quoting *W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *United States* v. *Keyspan Corp.,* 763 F. Supp. 2d 633 637–38 (S.D.N.Y. 2011) (''The Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will best serve society, but only to ensure that the resulting settlement is 'within the reaches of the public interest.' '' (quoting *United States* v. *Alex. Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997)); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. *See also Heckler* v. *Chaney,* 470 U.S. 821, 832 (1985) (quoting U.S. Const. art. II, § 3) (recognizing that the decision about which claims to bring ''has long been regarded as the special province of the Executive Branch.'').

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237, 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language made explicit what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17) *see also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

III. The Complaint and the Proposed Final Judgment

The Complaint alleges that, by unlawfully sharing its confidential and competitively sensitive information with RealPage for use in its and competing landlords' pricing, Cortland violated Section 1 of the Sherman Act, 15 U.S.C. 1. Under their licensing agreements with RealPage, Cortland and competing landlords have provided RealPage with daily, competitively sensitive, nonpublic information relating to their leasing businesses, including details like how many leases have been renewed, for what terms, and at what price. The transactional data that Cortland and other landlords have agreed to provide to RealPage includes current, forward-looking, granular, and highly competitively sensitive

[2] *See also BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

information. RealPage has used Cortland's competitively sensitive, nonpublic information to influence rental prices and other recommendations across rental properties managed by competing landlords. Cortland's rental prices and related recommendations were also influenced by its competitors' competitively sensitive, nonpublic information. In each relevant market, RealPage and participating landlords, including Cortland, have sufficient market power, including market and data penetration, to harm renters and the competitive process through this unlawful sharing of confidential and competitively sensitive information. Moreover, Cortland and other landlords can achieve any purported procompetitive objective of revenue management software without sharing this kind of information.

The Complaint also alleges that Cortland and other landlords, by adopting and using RealPage's revenue management software, have agreed with RealPage and each other to align their pricing and thereby violate Section 1 of the Sherman Act, 15 U.S.C. 1. RealPage has entered into agreements with Cortland and its competing landlords relating to how to price rental units, including through the licensing of its revenue management software—AI Revenue Management (''AIRM''), YieldStar, and Lease Rent Options (''LRO'')—to landlords, and the provision by landlords of their competitively sensitive, nonpublic transactional data to RealPage for training and running its revenue management software. Common adoption and use of RealPage's revenue management software by Cortland and other landlords has the likely effect of aligning their pricing processes, strategies, and pricing responses, and Cortland and other landlord users understand this likely effect.

The Complaint also alleges monopolization and attempted monopolization claims in violation of Section 2 of the Sherman Act, 15 U.S.C. 2, against RealPage, but not against Cortland or any of its competing landlords. Through its licensing agreements, RealPage has amassed a massive reservoir of competitively sensitive data from competing landlords. RealPage has ensured that other providers of revenue management software cannot compete on the merits unless they enter into similar anticompetitive agreements with landlords, thereby obstructing them from competing with products that do not harm the competitive process.

The proposed Final Judgment provides effective and appropriate remedies for this competitive harm. These include several requirements and restrictions on Cortland that address the United States' anticompetitive concerns regarding Cortland's conduct alleged in the Complaint. Among other terms:

i. Cortland must move from RealPage revenue management software to its proprietary revenue management software within 30 days of entry of the Stipulation and Order;

ii. Cortland's revenue management software cannot use any third-party nonpublic data, including in training its models or in the runtime operation;

iii. Cortland's revenue management software cannot pool pricing information across its different owners;

iv. The supply and demand models for Cortland's revenue management software cannot be trained using rental pricing, concessions, discounts, occupancy rates or capacity, or other rental pricing terms data across different owners;

v. Cortland cannot disclose, solicit, or use competitively sensitive information from competitors that can be used to set rental prices or generate pricing;

vi. Cortland must cooperate in this civil antitrust proceeding (*United States et al.* v. *RealPage et al.*) with respect to its prior use of RealPage's products and the monopolization and attempted monopolization claims against RealPage;

vii. Cortland must adopt a written antitrust compliance policy and designate a chief antitrust compliance officer who will train Cortland employees on the policy, enforce the policy, and perform annual audits for compliance with the policy;

viii. Cortland must allow the United States to perform inspections of its documents, code, and pseudocode relating to its proprietary revenue management software as well as to interview its employees to ensure compliance with the Final Judgment;

ix. Cortland cannot license or use any third-party revenue management software without the appointment of a compliance monitor who will have the ability to seek information from Cortland's employees to ensure compliance with certain restrictions related to use of third-party revenue management software and communications between Cortland and other property management companies;

x. Even with the oversight of a compliance monitor, Cortland cannot license or use any third-party revenue management software that (i) uses third-party nonpublic data to recommend or set prices or (ii) pools information across Cortland properties with different owners; and

xi. Cortland will also be subject to the appointment of a compliance monitor if the Court finds that Cortland has violated the terms of the proposed Final Judgment.

The proposed Final Judgment provides that it will expire four years from the date of its entry.

Under the terms of the Stipulation and Proposed Order, Cortland agreed to abide by and comply with the provisions of the proposed Final Judgment during the pendency of the Tunney Act proceedings, until the Final Judgment is entered by the Court or until the time for all appeals of any Court ruling declining entry of the proposed Final Judgment has expired.

The United States and Cortland have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the Tunney Act. Entry of the proposed Final Judgment will terminate this action with respect to Cortland, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof by Cortland.

IV. Summary of the Public Comment and the United States' Response

The United States received one public comment in response to the proposed Final Judgment from the Center for Democracy & Technology (''CDT''). CDT expresses concern over the use of ''algorithm-powered systems to collect and analyze'' current and future prices and occupancy from competing landlords to then provide recommendations to all participating landlords. CDT notes that ''this kind of information is competitively sensitive'' and should be ''closely guarded, not shared.'' (Exhibit 1 at 2). CDT explains that, in its view, the proposed Final Judgment's ''carefully designed'' obligations aim to ''ensure that it makes its own independent business decisions regarding rental prices'' and ''materially help[]'' the Division's ''investigation and enforcement action.'' (Exhibit 1 at 6).

Having carefully reviewed CDT's comment, the United States continues to believe that the proposed Final Judgment ''appropriately addresses the anticompetitive concerns underlying this enforcement action'' against Cortland and, therefore, ''is in the public interest.'' Nothing in this comment warrants a change to the proposed Final Judgment or indicates that the proposed Final Judgment is not in the public interest. As required by the APPA, the comment and this response

will be published in the **Federal Register**.

V. Conclusion

After reviewing the public comment, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint against Cortland, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comment and this response are published in the **Federal Register**.

Dated: May 1, 2025

Respectfully submitted,

By:

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Exhibit 1

Comments of Center for Democracy & Technology, United States v. RealPage, Inc., et al., No. 1:24–cv–00710–LCB–JLW

United States District Court for the Middle District of North Carolina Proposed Consent Decree With Cortland Management, LLC

March 24, 2025

Aaron Hoag
Chief, Technology and Digital Platforms Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 7100
Washington, DC 20530

By email—aaron.hoag@usdoj.gov

Dear Mr. Hoag:

The Center for Democracy & Technology (CDT) [3] respectfully submits these comments in support of the Justice Department's proposed consent decree with Cortland Management, Inc. In our view, the proposed decree would effectively and appropriately restore competition in Cortland's apartment rental activities, guard against recurrence of anticompetitive conduct by Cortland, and secure Cortland's assistance with the Department's continuing investigation of and enforcement against RealPage and the other apartment landlord defendants. It is therefore in the public interest, consistent with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (APPA), also known as the Tunney Act.

The Department's antitrust enforcement action,[4] filed August 23, 2024, along with eight states, charged RealPage with using an algorithm to organize and coordinate a scheme among apartment landlords to inflate rental prices in violation of the section 1 of the Sherman Act. The allegations set forth what appears to be a textbook example of using artificial intelligence to supercharge anticompetitive collusion,[5] a capability that CDT has written about previously.[4] The Department also charged RealPage with monopolizing multi-family apartment revenue management software in violation of section 2 of the Sherman Act.

In the amended complaint,[6] filed January 7, the Department and plaintiff states added seven major multi-family apartment landlords as defendants. The amended complaint and the February 25 Response [7] in Opposition to Defendant RealPage's Motion to Dismiss also added new factual allegations and analysis in support of the charges. As stated in the Response, the amended complaint clearly sets forth the requisite ''plausible claim for relief.'' [8]

The Unlawful Anticompetitive Scheme Charged Under Section 1 of the Sherman Act

As charged in the complaint, RealPage has created and advertised to apartment landlords an algorithm-powered system to collect and analyze, on a daily basis, current rental prices and planned future prices, and current availabilities and projected future availabilities, for all participating landlords. This information is separately categorized for each individual rental unit, according to size, floor plan, layout, and amenities. RealPage makes explicitly clear to the landlords that it will analyze this information and provide pricing recommendations to each landlord based on this information. This kind of information is competitively sensitive, and in a lawfully competitive marketplace it is closely guarded, not shared.

RealPage's alleged system has the hallmarks of a classic anticompetitive ''hub-and spoke'' [9] arrangement, under which competitors coordinate pricing and output decisions through a central clearinghouse ''hub.'' This kind of arrangement has been found to violate section 1 of the Sherman Act, which prohibits contracts, combinations, or conspiracies in restraint of trade, provided that the evidence sufficiently demonstrates that the competitors along the ''rim'' had a ''conscious commitment to a common scheme designed to achieve an unlawful objective.'' [10] It is not necessary that the competitors along the ''rim'' have direct communication with each other regarding the anticompetitive scheme, because they are communicating effectively through the ''hub'' as ''spokes.''

Here, per the Department's allegations, RealPage created the ''hub'' and advertised it to landlords, encouraging them to join up. RealPage explained that it would calculate pricing recommendations for them, based on pricing data submitted on a daily basis by every participating landlord in the market area. And RealPage further explained that the recommendations would be guided by the highest prices being charged, which would enable each landlord to confidently increase its own rental prices in line with the high end of prices being charged by its competitors.

So, per those allegations, the landlords were well aware that they would be ''spokes'' to RealPage's ''hub,'' participating along with their competitors, and that the result would be pricing recommendations that would result in inflated prices. Or, as RealPage regularly put it, would ''raise all ships.'' A RealPage revenue management vice president elaborated that this phrase means that ''there is greater good in everybody succeeding versus essentially trying to compete against one another in a way that actually keeps the industry down.'' And even more pointedly, that landlords using RealPage's software would ''likely move in unison versus against each other.''

Thus, based on the allegations, the landlords who joined up were consciously committing themselves to a common scheme not to compete. Their commitment includes paying RealPage a hefty fee in recognition of the value they are receiving.

In the words of the Department, the landlords are ''knowing and willing participants.''

But RealPage has allegedly gone beyond just creating and advertising the hub that enabled and facilitated a conscious commitment to unlawful pricing coordination. It has taken a number of calculated steps to make sure landlords follow through on that commitment. It constantly nudges landlords to follow each other's price increases. It actively monitors prices charged on literally millions of apartment units—not only to calculate new pricing recommendations, but also to determine which landlords are complying with its recommendations and which landlords are not.

According to the complaint, each day, RealPage sends updated pricing recommendations to each landlord. RealPage makes it easy for the landlord to accept the

[3] The Center for Democracy & Technology is a non-profit organization founded 30 years ago, when the commercial internet was just getting underway, to fight for democratic values and human rights in the digital age. Protecting and enabling an online marketplace where competition can thrive, and enhance choice for all and encourage innovation, is essential to that objective, as well as to the broader objective of fostering a strong economy and widely-shared prosperity.

[4] *www.justice.gov/d9/2024-08/424422.pdf.* Eight states joined the complaint as co-plaintiffs. These comments often refer to the Department's complaint or allegations or enforcement action.

[5] *See www.cdt.org/insights/justice-department-goes-after-algorithm-fueled-price-fixing-in-apartment-rentals/.*[4] *www.cdt.org/insights/is-artificial-intelligence-a-new-gateway-to-anticompetitive-collusion/.*

[6] *www.justice.gov/atr/media/1383471/dl.*

[7] *www.justice.gov/atr/media/1390941/dl?inline.*

[8] *See Robertson* v. *Sea Pines Real Estate Companies, Inc.,* 679 F.3d 278, 284 (4th Cir. 2012) (quoting *Ashcroft* v. *Iqbal,* 556 U.S. 662, 679 (2009)).

[9] *E.g., United States* v. *Apple, Inc.,* 791 F.3d 290, 314 (2d Cir. 2015).

[10] *E.g., id.* at 315. *See Interstate Circuit* v. *United States,* 306 U.S. 208, 227 (1939) (''Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act.''); *American Column & Lumber Co.* v. *United States,* 257 U.S. 377 (1921).

recommendations in bulk—it can be done with a single keystroke, or even programmed for auto-accept, which RealPage strongly encourages landlords to adopt. Diverging from the recommendation, in contrast, requires more work: the landlord's property manager must affirmatively give RealPage a ''strong sound business-minded'' justification for each divergence, based on something the algorithm is not accounting for, such as local construction or renovations occurring in the building. Further, whenever RealPage disagrees with the proffered justification, which is usually, the matter is escalated to the property manager's supervisor, and upward, with increasing assertiveness.

The result, according to the amended complaint: more than 85% of final floor plan prices are within 5% of RealPage's recommendation.

The Department further charges that RealPage reinforces its algorithm-driven coordinated upward pricing recommendations by discouraging landlords from offering renters discount ''concessions''—such as a free month's rent or waived fees—as landlords in a healthy competitive marketplace would naturally have incentives to offer. In its ''best practices'' for landlords, RealPage's guidance is simple: ''Eliminate concessions.'' Each landlord's agreement to refuse to offer concessions is bolstered by its awareness that competing landlords are receiving the same advice from RealPage.

Cortland Management's Proposed Agreement

Cortland Management, LLC is one of the participating apartment landlords added as defendants in the amended complaint. Headquartered in Atlanta, Georgia, it is one of the largest apartment managers in the United States—managing, as of 2024, more than 80,000 units and more than 220 properties in the United States.

Taking the Department's well-supported allegations as correct, as the law requires,[11] the proposed consent decree with Cortland materially advances the public interest by helping to ensure that rents that Cortland charges to consumers will be set based on market factors, rather than based on a conspiracy leading to inflated rents.

To remove itself from RealPage's anticompetitive scheme, Cortland has agreed:

- to stop using RealPage revenue management software, and switch to using only its own proprietary revenue management software;
- to stop using any non-public data in its possession obtained or derived from RealPage; and
- not to use in its own software any third-party nonpublic data, including from RealPage.

To guard against any relapse into anticompetitive pricing, Cortland has further agreed:

- not to disclose, solicit, or use competitively sensitive information from competitors, or between Cortland properties with different owners, that could be used to set or generate rental prices.
- not to train its own proprietary software using rental pricing, concessions, discounts, occupancy rates, capacity, or other rental pricing terms data from Cortland properties with different owners;
- not to license or use any third-party revenue management software that (1) uses third-party nonpublic data to recommend or set prices or (2) pools information across Cortland properties with different owners;
- not to license or use any third-party revenue management software that (1) generates a rental price floor or a limit on rental price decreases or (2) requires or incentivizes Cortland to accept any recommended rental prices;
- certify at the outset and annually that any such third-party software is in compliance;
- not to license or use *any* third-party revenue management software until after court appointment of an independent compliance monitor, who will have full authority to seek information from Cortland's employees to ensure compliance with specified restrictions to ensure that the software will not be used to anticompetitively coordinate pricing, amenities, or availability;
- to adopt a written antitrust compliance policy, and designate a chief antitrust compliance officer who will train Cortland employees on the policy, enforce the policy, and perform annual audits for compliance with the policy;
- for its general counsel to certify to the Department annually, under penalty of perjury, its compliance with the policy and with the consent decree; and
- to allow the Department to perform inspections of its documents, and its algorithmic code and descriptions for its proprietary revenue management software, and to interview its employees, to ensure compliance.

And, also importantly, Cortland agrees to fully and actively cooperate with the Department's investigation and enforcement as it continues.

These obligations are carefully designed to end Cortland's involvement with RealPage; to ensure that it makes its own independent business decisions regarding rental prices and availability, immediately becoming a strong competitive force in the markets where it operates; and to ensure that it materially helps the Department pursue the investigation and enforcement action to conclusion. In all these respects, the decree can be expected to have a significant positive impact for consumers, who will have the benefit of apartment rental prices determined by competition rather than collusion.

Conclusion

For the foregoing reasons, the Proposed Final Judgment appropriately addresses the anticompetitive concerns underlying this enforcement action, is in the public interest, and should be approved by the Court.

Respectfully,

George P. Slover,

Senior Counsel for Competition Policy, Center for Democracy & Technology

[11] *E.g., Advanced Health-Care Servs., Inc.* v. *Radford Community Hosp.,* 910 F.2d 139, 145 (4th Cir. 1990).

[FR Doc. 2025–08464 Filed 5–13–25; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1541]

Importer of Controlled Substances Application: Wedgewood Pharmacy LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Wedgewood Pharmacy LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on, or objections to the issuance of the proposed registration on or before June 13, 2025. Such persons may also file a written request for a hearing on the application on or before June 13, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the webpage or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this