

April 18, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20580

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Chair Khan and Assistant Attorney General Kanter,

We write regarding the issue of anticompetitive information exchanges (AIEs). AIEs allow businesses that should compete fairly to collude instead. By directly or indirectly sharing sensitive information about their operations, businesses can insulate themselves from market pressures and instead raise prices in tandem without fear of being undercut by their would-be competitors. The result: increases in the cost of food, rental housing, manufactured housing lot rentals, health care and other essentials.

We applaud the Federal Trade Commission (FTC) and the Department of Justice's (DOJ) recent leadership on AIEs. Last year, both agencies withdrew outdated guidance that created overly broad "safety zones" for information exchange.¹ While this old guidance permitted exchanging information that was just a few months old or channeled through a third-party intermediary, Principal Deputy Assistant General Doha Mekki has noted that those guidelines did not "fully reflect market realities, the risk of serious competitive harm, or the full scope of liability under the antitrust laws."² Market concentration and modern data analysis tools heighten the competitive risks of information exchange by enabling companies to collude more with less data.

We also support the enforcement actions you have already taken against AIEs. DOJ's lawsuit against poultry producers for exchanging information about employee pay and benefits resulted in an \$85 million settlement last year on behalf of underpaid workers.³ DOJ's ongoing lawsuit against Agri Stats for allegedly facilitating an AIE that drove up prices of chicken, pork, and turkey is another critical step in the fight against corporate collusion to take more dollars from

¹ <https://www.justice.gov/opa/pr/justice-department-withdraws-outdated-enforcement-policy-statements>;
<https://www.ftc.gov/news-events/news/press-releases/2023/07/federal-trade-commission-withdraws-health-care-enforcement-policy-statements>.

² <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-doha-mekki-antitrust-division-delivers-0>.

³ <https://news.bloomberglaw.com/antitrust/cargill-wayne-farms-sued-by-doj-for-sharing-wage-benefits-data>.

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WASHINGTON, DC 20510

Americans' wallets.⁴ DOJ has also filed a statement of interest in the lawsuit against RealPage and continues to investigate the company, which allegedly not only facilitated information exchange among landlords but algorithmically guided them to increase rent prices in unison.⁵

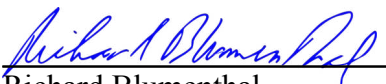
We urge you to continue vigorous action against AIEs. First, we encourage your agencies to continue scrutinizing various industries for evidence of AIEs. For example, manufactured home lot rental prices have skyrocketed, allegedly enabled by manufactured home community owners' collusive exchange of information via Datacomp, a third-party information provider.⁶ We urge you to consider filing a statement of interest in the ongoing litigation against Datacomp expressing that even in the absence of algorithmic price-setting, information exchange can still create severe competitive harms.

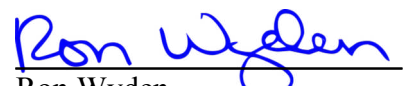
We also urge careful review of the health care industry, a data-rich field that gave rise to your agencies' initial information-sharing guidelines more than three decades ago. The agricultural sector, which has seen consolidation and price increases and has already been the site of problematic data-sharing, also warrants continued vigilance.

Second, we encourage you to consider issuing new guidelines to replace those your agencies have recently withdrawn. Rather than providing a "safety zone," new guidelines should indicate how myriad forms of information exchange pose dangers for the competitive marketplace. New guidelines, if issued, must clearly derogate the old exception for third-party aggregators. Guidelines must also reflect how defective data anonymization can create competitive harms. Finally, guidelines must expansively define competitively sensitive information within the bounds of the relevant case law. Beyond data on product price and output, information about costs (including wages and benefits) and even about consumers can create competitive harms when exchanged and must be deemed sensitive.

Throughout technological evolution and economic change, antitrust enforcers must continue their longstanding job: ensuring markets are competitive and fair. You have rightfully recognized how AIEs can jeopardize competition and increase prices for consumers, and we urge continued vigilance and action. We appreciate your continued attention to this important issue.

Sincerely,


Richard Blumenthal
United States Senator

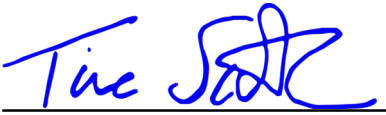

Ron Wyden
United States Senator

⁴ <https://www.justice.gov/opa/pr/justice-department-sues-agri-stats-operating-extensive-information-exchanges-among-meat>.

⁵ <https://www.propublica.org/article/doj-backs-tenants-price-fixing-case-big-landlords-real-estate-tech>;
<https://www.politico.com/news/2024/03/20/rental-housing-market-doj-investigation-00147333>.

⁶ <https://www.courthousenews.com/mobile-home-lot-owners-accused-of-rent-fixing-conspiracy-in-chicago>.

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