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Free Enterprise: Leveling the playing field not a deterrent to competition

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A lawsuit claiming the National Association of Realtors discriminated against members who provided online-only services has reached a preliminary settlement.

One of the country's two antitrust watchdog agencies, the Antitrust Division of the Department of Justice, had not minced words when it filed the initial complaint. The DOJ accused the Realtors of stifling "competition to advantage some of its members at the expense of home buyers and sellers across the country."

It alleged that the NAR denied Internet companies access to Multiple Listing Services information. According to documents filed in the case, the DOJ sees the lower-cost online technology as representing "a competitive challenge to traditional brokers."

Giving "Web-savvy consumers more control over their search for a home," wrote the government, would tend to result in better service and lower costs to consumers.

Last week, the two parties agreed to a proposed final judgment in which the NAR does not have to admit any liability or wrongdoing in exchange for agreeing to certain procedures and prohibitions to prevent a loss of competition. The latter are guarantees that online brokers, who are actively engaged in the trading of real estate, have uninhibited access to the for-sale listings generated by traditional agents.

In a small victory to the NAR, this wording will still deny access to businesses, which simply post real estate data online and create their revenue through advertisement.

Answering the original charges was not an easy task for the NAR. After all, buying or selling a house is one of the most important financial decisions a household makes, and almost everybody would agree that providing more information to consumers should be encouraged.

Moreover, at the time of the complaint, the blockbuster book "Freakonomics" had just popularized the notion that traditional brokers, perhaps, needed additional competitive pressure. The authors had presented evidence that homes owned by Realtors, on average, stayed on the market longer and sold for more money than comparable homes of

clients.

Consequently, it is not surprising that the NAR has decided to "settle" with the DOJ. The basis for the government's intervention was a venerable 1890 law, the Sherman Act, which reads in section 1: "Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade ... is hereby declared to be illegal."

In this case, the Sherman Act seems to have worked as intended. Rather than burdening the economy with additional regulation, the proposed solution to the case appears to encourage vigorous competition in real estate markets.

It is a tenet of free enterprise that more transparency and the increased availability of information about the goods to be traded (including such features as quality and price) promote efficiency in markets. Also, rather than hurting Realtors, it may actually help the industry.

Granted, there may be downward pressure on commissions, if and when this agreement between the DOJ and the NAR is implemented.

Nevertheless, a more efficient search process could also lead to trades that would not otherwise have happened, thereby increasing earning potential for the most innovative brokers.

The scenario, though, is not all rosy for consumers. With a greater variety of brokerage products will also come even more responsibility for those seeking to buy homes. Traditional, "brick and mortar" brokers - and many readers, undoubtedly, have dealt with really good ones - have a strong incentive to provide quality service because much of their business is generated from referrals by satisfied customers.

Some of the new products that will pop up in the market may be unsavory, and it is up to the consumer to ferret those out. Free enterprise, not coincidentally, includes the freedom to settle for the wrong choice.

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