



## OREGON DEPARTMENT OF JUSTICE

TO: Senate Committee on Housing and Development

FROM: Leslie Wu, Policy Advisor to Attorney General Rayfield, Oregon Department of Justice

DATE: March 19, 2025

SUBJECT: Testimony in Support of SB 722

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The Oregon Department of Justice writes in support of SB 722, and we look forward to working with advocates on friendly technical amendments. This bill clarifies that the application of algorithmic software to non-public competitor data for the purpose of setting rent prices is a violation of Oregon law. That practice, which decreases competition among landlords, is also a violation of the Sherman Act's prohibition on price fixing. Passage of SB 722 will help to put an end to this anticompetitive conduct that allows landlords to undermine fair pricing and protect competition in Oregon's rental marketplace.

The Sherman Act of 1890, the oldest of America's antitrust laws, is aimed at preserving free and unfettered competition as the rule of trade. Arrangements among competitors or businesses to fix prices are considered so harmful to consumers that they are "*per se*" violations of the Sherman Act; in other words, no defense or justification is allowed. Price fixing is an agreement (written, verbal, or inferred from conduct) among competitors to raise, lower, maintain, or stabilize prices or price levels. Prolific data collection and emerging algorithmic software has created a new frontier in price fixing—specifically in the rental marketplace. Companies selling software services will contract with competing landlords who agree to share nonpublic, competitively sensitive information about their apartment rental rates and other lease terms to train and run algorithmic pricing software. This software then generates recommendations, including on apartment rental pricing and other terms, for participating landlords based on their and their rivals' competitively sensitive information.

In January of this year, the Oregon Department of Justice and other state attorneys general, along with the US Department of Justice, announced a consent decree against one of six major

landlords being investigated for price fixing. The landlords are alleged to have been using an algorithmic price fixing scheme (through RealPage) to decrease competition in apartment pricing, harming millions of American renters. An amended complaint filed by plaintiff states and the US Department of Justice further demonstrated how the landlords used the algorithmic software and platform to engage in price fixing, including by:

- **Directly communicating with competitors' senior managers about rents, occupancy, and other competitively sensitive topics.** In one example, one landlord company supplied a competitor with information not only about very recent renewal rates, but also its approach to pricing for the upcoming quarter, its acceptance of RealPage's pricing recommendations, use of concessions and competitively sensitive information about occupancy. Likewise, executives at the two companies communicated over the course of months about their pricing strategies, including plans for certain price increases.
- **Regularly conducting “call arounds.”** During these discussions, euphemistically referred to as “market surveys,” property managers called or emailed competitors to share, and sometimes discuss, competitively sensitive information about rents, occupancy, pricing strategies and discounts.
- **Participating in “user groups” hosted by RealPage.** For instance, landlords discussed via user groups how to modify the software’s pricing methodology, as well as their own pricing strategies. In one example, two competing landlord company executives participated in a user group discussion of plans for renewal increases, concessions and acceptance rates of RealPage rent recommendations.

This problem affects Oregon renters in a meaningful way. In 2023, approximately one in four rentals in the multifamily housing sector used a RealPage pricing algorithm. In Oregon’s Aloha/West Beaverton and Central Portland neighborhoods, rental markets had RealPage subscription penetration exceeding 30 percent, reaching 54,000 rental units in those markets.

Algorithmic software should not be allowed to shield or obfuscate the illegal practice of price fixing. SB 722 makes a clear statement that Oregonians deserve a competitive rental market free of price fixing.