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REAL ESTATE BROKERAGE

Various Factors May Affect Price Competition

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Highlights of [GAO-06-1005T](#), a testimony before the Subcommittee on Housing and Community Opportunity, Committee on Financial Services, House of Representatives

Why GAO Did This Study

Consumers paid an estimated \$65.7 billion in residential real estate brokerage fees in 2005. Observing that commission rates have remained relatively uniform—regardless of market conditions, home prices, or the effort required to sell a home—some economists have questioned the extent of price competition in the residential real estate brokerage industry. Furthermore, while the Internet offers time and cost savings to the process of searching for homes, Internet-oriented brokerage firms account for only a small share of the brokerage market. This has raised concerns about potential barriers to greater use of the Internet in real estate brokerage.

In this testimony, which is based on a report issued in August 2005, GAO discusses (1) factors affecting price competition in the residential real estate brokerage industry and (2) the status of the use of the Internet in residential real estate brokerage and potential barriers to its increased use.

www.gao.gov/cgi-bin/getrpt?GAO-06-1005T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact David G. Wood at (202) 512-8678 or woodd@gao.gov.

REAL ESTATE BROKERAGE

Various Factors May Affect Price Competition

What GAO Found

The residential real estate brokerage industry has competitive attributes, but its competition appears to be based more on nonprice factors, such as reputation or level of service, than on brokerage fees, according to a review of the academic literature and interviews with industry analysts and participants. Although comprehensive data on brokerage fees are lacking, past analyses and anecdotal information suggest that commission rates have persisted in the same range over long periods, regardless of local market conditions, housing prices, or the cost or the effort required to sell a home. One potential cause of limited price variation in the industry is the use of multiple listing services (MLS), which facilitates cooperation among brokers in a way that can benefit consumers but may also discourage participating brokers from deviating from conventional commission rates. For instance, an MLS listing gives brokers information on the commission that will be paid to the broker who brings the buyer to that property. This practice potentially creates a disincentive for home sellers or their brokers to offer less than the prevailing rate, since buyers' brokers may show high-commission properties first. In addition, some state laws and regulations may also affect price competition, such as those prohibiting brokers from giving clients rebates on commissions and those requiring brokers to provide consumers with a minimum level of service. Although such provisions can protect consumers, the Department of Justice and the Federal Trade Commission have argued that they may prevent price competition or reduce consumers' choice of brokerage services.

The Internet has changed the way consumers look for real estate and has facilitated the growth of alternatives to traditional brokers. A variety of Web sites allows consumers to access property information that once was available only by contacting brokers directly. The Internet also has fostered the growth of nontraditional residential real estate brokerage models, including discount brokers and broker referral services. However, industry participants and analysts cited several potential obstacles to more widespread use of the Internet in real estate transactions, including restrictions on listing information on Web sites, some traditional brokers' resistance to cooperating with nontraditional firms, and certain state laws and regulations that prohibit or restrict commission rebates to consumers.

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to be here today as you consider issues related to residential real estate brokerage—that is, the bringing together of buyers and sellers of homes and the provision of related services by licensed brokers and agents. My statement today is based primarily on GAO’s August 2005 report on the residential real estate brokerage industry.¹

The fees paid for residential real estate brokerage have increased as home prices have risen in recent years, well beyond the rate of general price inflation. While comprehensive data do not exist, REAL Trends, an industry source, estimated that in 2005 consumers paid about \$65.7 billion in real estate brokerage fees related to home sales, up from approximately \$43 billion in 2000. Payments to brokers are typically percentage commissions, or a percentage of the sales price of the home. An observed tendency toward uniform commission rates regardless of local market conditions has led many economists and other observers to question the level of price competition—that is, the rivalry among firms to attract clients on the basis of price—in the residential real estate brokerage industry. While the emergence of the Internet offers the potential to reduce costs by generating efficiencies and new ways of doing business, and many consumers now use the Internet to search for homes and related services such as mortgages, Internet-oriented brokerage firms represent a small share of the market.² This has raised questions concerning potential institutional, legal, and other barriers to greater “e-commerce” in real estate brokerage.

My statement today discusses (1) factors affecting price competition in the residential real estate brokerage industry and (2) the status of the use of the Internet in residential real estate brokerage and potential barriers to its increased use. In preparing our August 2005 report, we reviewed academic literature and interviewed and obtained documents from industry analysts, the National Association of Realtors® (NAR), residential real estate brokerage firms and franchisors, the Department of Justice (DOJ), the

¹GAO, *Real Estate Brokerage: Factors That May Affect Price Competition*, [GAO-05-947](#) (Washington, D.C.: Aug. 31, 2005).

²For the purposes of this statement, the term “Internet-oriented brokerages” refers to brokerage firms whose business models depend largely on the Internet. Other brokerage firms may also use the Internet to varying degrees.

Federal Trade Commission (FTC), and others. We also reviewed relevant selected state laws and regulations and state and federal court decisions. Academic studies that we reviewed for our work are listed at the end of this statement.

In summary:

- While the residential real estate brokerage industry has competitive attributes—such as a large number of relatively small firms and ease of entry—competition in this industry appears to be based more on nonprice factors, such as reputation or level of service, than on price. Although comprehensive data on brokerage fees are lacking, past analyses and anecdotal information suggest that commission rates have persisted in the same range over long periods, regardless of local market conditions, housing prices, or the cost or the effort required to sell a home. Our review of the academic literature and interviews with industry analysts and participants suggested several potential causes of this apparent lack of price variation. Multiple listing services (MLS)—the local organizations through which residential real estate brokers share information about properties for sale—facilitate cooperation among brokers in a way that can benefit consumers, but may also discourage participating brokers from deviating from conventional commission rates. For example, the practice of showing the commission that buyers’ brokers will receive for cooperating in the sale of a property may discourage brokers from offering less than the prevailing commission rate. In addition, some states prohibit brokers from giving clients rebates on commissions, and some states require or are considering proposals to require brokers to provide consumers with a minimum level of service. Although such laws may offer some consumer protections, DOJ and FTC have argued that they can potentially prevent price competition or reduce consumers’ choice of brokerage services.
- The Internet has increased consumers’ access to information about properties for sale and fostered the growth of Internet-oriented real estate brokerage models, including some discount brokers and services that refer clients to brokers. However, industry participants and analysts cited several potential obstacles to more widespread use of the Internet in real estate transactions. These obstacles include the extent to which property information is made available for brokers to post online, the resistance of some traditional brokers to cooperate with nontraditional firms, and certain state laws and regulations that prohibit or restrict commission rebates to consumers.

Background

Traditionally, real estate brokers have offered a full, “bundled” package of services to sellers and buyers, including marketing the seller’s home or assisting in the buyer’s search, holding open houses and showing homes, preparing offers and assisting in negotiations, and coordinating the steps to close the transaction. Because real estate transactions are complex and infrequent for most people, many consumers benefit from a broker’s specialized knowledge of the process and of local market conditions. Still, some consumers choose to complete real estate transactions without a broker’s assistance, including those who sell their properties on their own, or “for-sale-by-owner.”

For many years, the industry has used a commission-based pricing model, with sellers paying a percentage of the sales price as a brokerage fee. Brokers acting for sellers typically invite other brokers to cooperate in the sale of the property and offer a portion of the total commission to whoever produces the buyer. Agents involved in the transaction may be required to split their shares of the commission with their brokers.³ Under this approach, brokers and agents receive compensation only when sales are completed.

In recent years, alternatives to this traditional full-service brokerage model have become more common, although industry analysts and participants told us that these alternatives still represented a small share of the overall market in 2005. Discount full-service brokerages charge a lower commission than the prevailing local rate, but offer a full package of services. Discount limited-service brokerages offer a limited package of services or allow clients to choose from a menu of “unbundled” services and charge reduced fees on a commission or fee-for-service basis.

Most local real estate markets have an MLS that pools information about homes that area brokers have agreed to sell. Participating brokers use an MLS to “list” the homes they have for sale, providing other brokers with detailed information on the properties (“listings”), including how much of the commission will be shared with the buyer’s agent. An MLS serves as a single, convenient source of information that provides maximum exposure for sellers and facilitates the home search for buyers. Each MLS is a private entity with its own membership requirements and operating

³Brokers who operate as part of a franchise may also be required to share a portion of their commission revenue with the franchise, in payment for using the brand name and other services.

policies and procedures. According to NAR, approximately 900 MLSs nationwide were affiliated with the trade association in 2005. These NAR-affiliated MLSs are expected to follow NAR's model guidelines for various operational and governance issues, such as membership requirements and rules for members' access to and use of listing information. An MLS that is not affiliated with NAR is not bound by these guidelines.

Individual states regulate real estate brokerage, establishing licensing and other requirements for brokers and agents. Of the two categories of state-licensed real estate practitioners, *brokers* generally manage their own offices, and *agents*, or salespeople, must work for licensed brokers. States generally require brokers to meet more educational requirements than agents, have more experience, or both. For the purposes of this statement, I will generally refer to all licensed real estate practitioners as brokers.

Various Factors Can Influence the Extent of Price Competition in Real Estate Brokerage

Some economists have observed that brokers typically compete more on nonprice factors, such as service quality, than on price. While comprehensive price data are lacking, evidence from academic literature and industry participants with whom we spoke highlight several factors that could limit the degree of price competition, including broker cooperation, largely through MLSs, which can discourage brokers from competing with one another on price; resistance from traditional full-service brokers to brokers who offer discounted prices or limited services; and state antirebate and minimum service laws and regulations, which some argue may limit pricing and service options for consumers.

Real Estate Brokerage Is Characterized More by Nonprice Competition Than Price Competition

The real estate brokerage industry has a number of attributes that economists normally associate with active price competition. Most notably, the industry has a large number of brokerage firms and individual licensed brokers and agents—approximately 98,000 active firms and 1.9 million active brokers and agents in 2004, according to the Association of Real Estate License Law Officials. Although some local markets are dominated by 1 or a few large firms, market share in most localities is divided among many small firms, according to industry analysts. In addition, the industry has no significant barriers to entry, since obtaining a license to engage in real estate brokerage is relatively easy and the capital requirements are relatively small.

While real estate brokerage has competitive attributes, with a large number of players competing for a limited number of home listings, much of the academic literature and some industry participants we interviewed

described this competition as being based more on nonprice variables, such as quality, reputation, or level of service, than on price. One reason for this characterization is the apparent uniformity of commission rates. Comprehensive data on brokerage fees are lacking. However, past analyses and anecdotal information from industry analysts and participants indicate that, historically, commission rates were relatively uniform across markets and over time. Various studies using data from the late 1970s through the mid-1980s found evidence that the majority of listings in many communities clustered around the same rate, exactly 6 percent or 7 percent. Although these studies and observations do not indicate that there has been complete uniformity in commission rates, they do suggest that variability has been limited. Many of the industry analysts and participants we interviewed said that commissions still cluster around a common rate within most markets, and they generally cited rates of 5 percent to 6 percent as typical.

Some economists have cited certain advantages to the commission-based model that is common in real estate brokerage, most notably that it provides sellers' brokers with an incentive to get the seller the highest possible price. Moreover, uniformity in commission rates within a market at a given time does not necessarily indicate a lack of price competition. But some economists have noted that in a competitive marketplace, real estate commission rates could reasonably be expected to vary across markets or over time—that is, to be more sensitive to housing market conditions than has been traditionally observed. For example, commission rates within a market at a given time do not appear to vary significantly on the basis of the price of the home. Thus, the brokerage fee, in dollar terms, for selling a \$300,000 home is typically about three times the fee for selling a \$100,000 home, although the time or effort required to sell the two homes may not differ substantially.⁴ Similarly, commission rates do not appear to have changed as much as might be expected in response to rapidly rising home prices in recent years. Between 1998 and 2005, the national median sales price of existing homes, as reported by NAR, increased about 74 percent, while inflation over the same period was about 16 percent, leaving an increase of some 58 percent in the inflation-adjusted price of housing. According to REAL Trends, average commission rates among the largest brokerage firms fell from an estimated 5.5 percent

⁴Some industry participants we met with suggested that it costs more to market expensive homes, in part because the number of prospective buyers is smaller. However, we did not identify any data on brokers' actual costs of marketing homes.

in 1998 to an estimated 5.0 percent in 2005, a decrease of about 9 percent.⁵ Thus, with the increase in housing prices, the brokerage fee (in dollars) for selling a median-priced home increased even as the commission rate fell.

Some economists have suggested that uniformity in commission rates can lead brokers to compete on factors other than price in order to gain market share. For example, brokers might hire more agents in an effort to win more sellers' listings. Brokers may also compete by spending more on advertising or offering higher levels of service to attract clients. Although some of these activities can benefit consumers, some economic literature suggested that such actions lead to inefficiency because brokerage services could be provided by fewer agents or at a lower cost.

To the extent that commission rates may have declined slightly in recent years, the change may be the result in part of rapidly rising home prices, which have generated higher brokerage industry revenues even with lower commission rates. However, competition from increasing numbers of discount, fee-for-service, and other nontraditional brokerage models may have also contributed to the decline. These nontraditional models typically offer lower fees, and although NAR consultants estimated that nontraditional firms represented only about 2 percent of the market in 2003, these firms may be putting some downward pressure on the fees charged by traditional brokerages.

Cooperation Facilitated by MLSs and Other Factors May Inhibit Price Competition

Factors related to the cooperation among brokers facilitated by MLSs, some brokers' resistance to discounters, and consumer attitudes may inhibit price competition within the real estate brokerage industry.⁶

First, while MLSs provide important benefits to consumers by aggregating data on homes for sale and facilitating brokers' efforts to bring buyers and sellers together, the cooperative nature of the MLS system can also in effect discourage brokers from competing with one another on price. Because participating in an MLS in the areas where they exist is widely considered essential to doing business, brokerage firms may have an

⁵REAL Trends' data did not address the range of or variation among actual commission rates. REAL Trends estimates average commission rates by dividing the total gross commission revenue reported by the largest brokerage firms by their total sales volume.

⁶We made no judgment on the legality of any actions that may inhibit price competition; such matters were beyond the scope of our work.

incentive to adopt practices that comply with MLS policies and customs. As previously noted, MLSs facilitate cooperation in part by enabling brokers to share information on the portion of the commission that sellers' brokers are offering to buyers' brokers. In the past, some MLSs required participating brokers to charge standard commission rates, but this practice ended after the Supreme Court ruled, in 1950, that an agreement to fix minimum prices was illegal under federal antitrust laws.⁷ Subsequently, some MLSs adopted suggested fee schedules, but this too ended after DOJ brought a series of antitrust actions in the 1970s alleging that this practice constituted price fixing.⁸ Today, MLSs no longer establish standard commission rates or recommend how commissions should be divided among brokers. MLS listings do show how much sellers' brokers will pay other brokers for cooperating in a sale, according to industry participants. When choosing among comparable homes for sale, brokers have a greater incentive—all else being equal—to first show prospective buyers homes that offer other brokers the prevailing commission rate, rather than homes that offer a lower rate. Therefore, even without formal policies to maintain uniform rates, individual brokers' reliance on the cooperation of other brokers to bring buyers to listed properties may help maintain a standard commission rate within a local area, at least for buyers' brokers. FTC, in a 1983 report, concluded that the cooperative nature of the industry and the interdependence among brokers were the most important factors explaining the general uniformity in commission rates that it had observed in many markets in the late 1970s.

Second, traditional brokers may discourage price competition by resisting cooperation with brokers and firms whose business models depart from charging conventional commission rates, according to several industry analysts and participants with whom we spoke.⁹ A discount broker may advertise a lower commission rate to attract listings, but the broker's success in selling those homes, and in attracting additional listings in the future, depends in part on other brokers' willingness to cooperate (by

⁷ *United States v. National Association of Real Estate Boards*, 339 U.S. 485, 488-89 (1950).

⁸ For example, see *United States v. Greater Pittsburgh Bd. of Realtors*, 1973-1 Trade Cas. ¶ 74,454 (W.D. Pa. 1973), and *United States v. Los Angeles Realty Bd.*, 1973-1 Trade Cas. ¶ 74,366 (C.D. Cal. 1973). In 1971, NAR adopted a policy prohibiting its affiliated MLSs from fixing or recommending to their members commission rates or fees to be charged or the percentage division of commissions or fees.

⁹ We did not investigate specific instances of alleged resistance to cooperation, nor did we have information to assess how common such practices might be.

showing the homes to prospective buyers) in the sale of those listings. Some discount full-service and discount limited-service brokerage firms we interviewed said that other brokers had refused to show homes listed by discounters. In addition, traditional brokers may in effect discourage discount brokers from cooperating in the sale of their listings by offering discounters a lower buyer's broker commission than the prevailing rate offered to other brokers. This practice can make it more difficult for discount brokers to recruit new agents because the agents may earn more working for a broker who receives the prevailing commission from other brokers.¹⁰ Some traditional full-service brokers have argued that discount brokers often do less of the work required to complete the transaction and, thus, deserve a smaller portion of the seller's commission. Representatives of discount brokerages told us they believed that reduced commission offers are in effect "punishment" for offering discounts to sellers and are intended as signals to other brokers to conform to the typical pricing in their markets.

Finally, pressure from consumers for lower brokerage fees appears to have been limited, although it may be increasing, according to our review of economics literature and to several industry analysts and participants. Some consumers may accept a prevailing commission rate as an expected cost, in part because that has been the accepted pricing model for so long, and others may not realize that rates can be negotiated. Buyers may have little concern about commission rates because sellers directly pay the commissions. Sellers may be reluctant to reduce the portion of the commission offered to buyers' brokers because doing so can reduce the likelihood that their homes will be shown. In addition, home sellers who have earned large profits as housing prices have climbed in recent years may have been less sensitive to the price of brokerage fees. However, some brokers and industry analysts noted that the growth of firms offering lower commissions or flat fees has made an increasing number of consumers aware that there are alternatives to traditional pricing structures and that commission rates are negotiable.

¹⁰Conversely, officials from one firm suggested that a broker who offers lower commissions to other brokers may have difficulty recruiting or retaining agents because the affected brokers will have less incentive to cooperate with those agents.

Some State Laws and Regulations Can Affect Price Competition

Although state laws and regulations related to real estate licensing can protect consumers, DOJ and FTC have expressed concerns that laws and regulations that restrict rebates to consumers or require minimum levels of service by brokers may also unnecessarily hinder competition among brokers and limit consumer choice.

As of July 2006, at least 12 states appeared to prohibit, by law or regulation, real estate brokers from giving consumers rebates on commissions or appeared to place restrictions on this practice.¹¹ Proponents said such laws and regulations help ensure that consumers choose brokers on the basis of the quality of service as well as price, rather than just on the rebate being offered. Opponents of antirebate provisions argued that such restrictions serve only to limit choices for consumers and to discourage price competition by preventing brokers from offering discounts. Opponents also noted that offering a rebate is one of the few ways to reduce the effective price of buyer brokerage services, since commissions are typically paid wholly by the seller.¹² In November 2005, DOJ and the Kentucky Real Estate Commission settled a suit in which DOJ had alleged that the commission's administrative regulation banning rebates violated federal antitrust law. In its complaint, DOJ argued that the regulation unreasonably restrained competition to the detriment of consumers, making it more difficult for them to obtain lower prices for brokerage services.¹³ Pursuant to the approved settlement agreement, the commission put in place emergency regulations permitting rebates and other inducements as long as they are disclosed in writing.

In addition, as of July 2006, 12 states appeared to be considering or to have passed legislation that requires brokers to provide a minimum level of

¹¹ As of July 13, 2006, states that appeared to prohibit or place restrictions on real estate brokers giving consumers rebates on commissions included Alabama, Alaska, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, North Dakota, Oklahoma, Oregon, and Tennessee. At the time of our August 2005 report, West Virginia also restricted rebates, but it no longer does so. We did not review all states' laws and regulations or evaluate how the states interpret and apply provisions, so other states also may prohibit or restrict commission rebates to consumers.

¹² According to economic theory, sellers pass a portion of their brokerage costs to buyers in the price of the home. By offering a rebate to the buyer, a broker is in effect offering to offset this cost.

¹³ Complaint, United States v. Kentucky Real Estate Commission, U.S. Dist. Ct., W.D. Ky., Case No. 3:05CV-188H, at 1, 2 (Mar. 30, 2005).

service when they represent consumers.¹⁴ Such provisions generally require that when a broker agrees to act as a consumer's exclusive representative in a real estate transaction, the broker must provide such services as assistance in delivering and assessing offers and counteroffers, negotiating contracts, and answering questions related to the purchase and sale process. Advocates of minimum service standards argued that they protect consumers by ensuring that brokers provide a basic level of assistance. Furthermore, full-service brokers argued that such standards prevent them from having to unfairly shoulder additional work when the other party uses a limited-service broker. Opponents of these standards argued that they restrict consumer choice and raise costs by impeding brokerage models that offer limited services for a lower price.¹⁵ Between April and November 2005, DOJ wrote to state officials in Oklahoma and New Mexico, and DOJ and FTC jointly wrote to officials in Alabama, Michigan, Missouri, and Texas discouraging adoption of these states' proposed minimum service laws and regulations. The letters argued that the proposed standards in these states would likely harm consumers by preventing brokers from offering certain limited-service options and therefore requiring some sellers to buy brokerage services they would otherwise choose to perform themselves. They also cited a lack of evidence that consumers have been harmed by limited-service brokerage. Despite the concerns raised by DOJ and FTC, the governors in Alabama, Missouri, Oklahoma, and Texas subsequently signed minimum service standards into law.

The Internet Has Increased Consumers' Options, but Several Factors Could Limit Its Wider Use

The Internet has increased consumers' access to information about properties for sale and has facilitated new approaches to real estate transactions. Whether the Internet will be more widely used in real estate brokerage depends in part on the extent to which listing information is widely available. Like discount brokerages, Internet-oriented brokerage firms, especially those offering discounts, may also face resistance from traditional brokers and especially may be affected by state laws that prohibit them from offering rebates to consumers.

¹⁴As of July 13, 2006, Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Missouri, Oklahoma, Texas, Wisconsin, and Utah had enacted minimum service standards. At that time, Michigan was considering adopting such standards.

¹⁵Minimum service standards would not necessarily prohibit a broker from providing limited advice or service to a client if the broker had not agreed to act as the consumer's exclusive representative. However, an MLS may require brokers to have such an agreement in order to enter a property listing in the MLS.

The Internet Allows Consumers More Direct Access to Information and Facilitates Alternative Service and Pricing Options

The Internet allows consumers direct access to listing information that has traditionally been available only from brokers. Before the Internet was widely used to advertise and display property listings, MLS data (which comprise a vast majority of all listings) were compiled in an “MLS book” that contained information on the properties listed for sale with MLS-member brokers in a given area. In order to view the listings, buyers generally had to use a broker, who provided copies of listings that met the buyer’s requirements via hard copy or fax. Today, information on properties for sale—either listed on an MLS or independently, such as for-sale-by-owner properties—is routinely posted on Web sites, often with multiple photographs or virtual tours. Thus, the Internet has allowed buyers to perform much of the search and evaluation process independently, before contacting a broker.¹⁶ Sellers of properties can also benefit from the Internet because it can give their listings more exposure to buyers. Sellers may also use the Internet to research suitable asking prices for their homes by comparing the attributes of their houses with others listed in their areas.

Although Internet-oriented brokerages and related firms represented only a small portion of the real estate brokerage market in 2005, the Internet has made different service and pricing options more widely available to consumers. Among these options are full-service and limited-service discount brokerages, information and referral companies, and alternative listing Web sites.

- *Full-service discount brokerages* offer buyers and sellers full-service real estate brokerage services but advertise lower than traditional commissions, for example between 3 percent and 4.5 percent. These types of brokerages existed before widespread use of the Internet, but many have gained exposure and become more viable as a result of the Internet. In addition, by posting listings online, displaying photographs and virtual tours of homes for sale, and communicating with buyers and sellers by e-mail, some of these companies say that they have been able to cut brokerage costs.

¹⁶Before the Internet, a buyer could still learn about properties without a broker—for example, through newspaper advertisements or by driving past to view a property. However, the Internet enables consumers to obtain far more extensive information, including, in some cases, complete details on the property from the MLS as well as photographs or a virtual tour.

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- *Limited-service discount brokerages* provide fewer services than full-service brokerages but also charge lower commissions or offer their services for flat fees. For example, some firms charge a flat fee for marketing and advertising homes and, for additional fees, will list a property in the MLS and show the home to prospective buyers. The Internet has allowed these firms to grow in number and size in recent years, in part because they can market their services to a larger population of buyers and sellers.
 - *Information and referral companies* provide resources for buyers and sellers—such as home valuation tools and access to property listings—and make referrals of those consumers to local brokers.¹⁷ Some of these companies charge referral fees to brokers and then rebate a portion of that fee back to buyers and sellers. The Internet allows these companies to efficiently reach potential consumers and offer those customers services and access to brokers.
 - *Alternative listing Web sites* offer alternatives to the MLS, allowing sellers who want to sell their homes themselves to advertise their properties to buyers and giving buyers another source of information on homes for sale. These alternative listing sites include the Web sites of local newspapers, Craigslist, and “for-sale-by-owner” Web sites.¹⁸

¹⁷These information and referral companies typically have a network of participating real estate brokers in various markets to which they refer customers. Although some information and referral companies are themselves licensed real estate brokers, they generally do not directly provide services typical of a real estate broker, such as showing homes or negotiating a sales price.

¹⁸Craigslist is a noncommercial Internet bulletin board that operates in more than 300 communities in more than 50 countries. Among other things, users of Craigslist can post or review information on properties for sale.

Wider Use of the Internet in Real Estate Brokerage Will Depend on the Availability of Listing Information and Other Factors

Several factors could limit the extent to which the Internet is used in real estate transactions. A key factor is the extent to which information about properties listed in an MLS is widely available. Currently, buyers may view MLS-listed properties on many Web sites, including broker and MLS Web sites and on NAR's Realtor.com Web site. The real estate brokerage industry has faced controversy over the public availability of listings on the Internet and over whether brokers can restrict the display of their listings on other brokers' Web sites.¹⁹ Proponents of allowing such restrictions argued that listings are the work product, and thus the property, of the selling broker, who should have control over how the listings are used. Opponents argued that such control would unfairly limit Internet-oriented brokers' ability to provide their clients with access to MLS listings through their Web sites.

Even with few restrictions on the availability of information about properties for sale, Internet-oriented brokerage firms may face other challenges. First, Internet-oriented brokers with whom we spoke described resistance, similar to that previously described, involving some traditional brokerages that refused to show the Internet-oriented brokerages' listed properties or offered them buyers' brokers commissions that were less than those offered to other brokers. However, the online availability of listing information may discourage such behavior by enabling buyers to more easily detect whether a broker is avoiding other brokers' listings that are of interest. Second, some Internet-oriented companies said that state antirebate laws and regulations could affect them disproportionately, since their business models often were built around such rebates. Finally, other factors, such as the lack of a uniform technology to facilitate related processes—such as inspection, appraisal, financing, title search, and settlement—may inhibit the use of the Internet for accomplishing the full range of activities needed for real estate transactions.

¹⁹On August 31, 2005, NAR's Internet Listing Display policy took effect, replacing the Virtual Office Web site policy that was in place when we completed our August 2005 report. Both policies set out guidelines for how NAR-affiliated MLSs could govern the Internet display of listing information. The Virtual Office Web site policy allowed MLS participants to selectively exclude their listings from display on other participants' Web sites, while the newer policy allows participants to exclude their listings on either all other participants' Web sites, or none of them. DOJ has filed suit against NAR alleging that both policies violate federal antitrust law (Amended Complaint, United States v. National Association of Realtors, U.S. Dist. Ct., N.D. Ill., Case No. 05C-5140 (Oct. 4, 2005)).

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions at this time.

Contacts and Acknowledgments

For further information on this testimony, please contact David G. Wood at (202) 512-8678. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Jason Bromberg, Tania Calhoun, Julianne Stephens Dieterich, and Cory Roman.

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