REVISITING INFORMATION SHARING IN THE WAKE OF *AGRI STATS* AND *REALPAGE*

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This article examines the evolution of antitrust enforcement on information sharing in the wake of the Department of Justice's recent cases against Agri Stats and RealPage. With the rescission of longstanding "safety zone" guidance and a shift toward case-by-case analysis, these matters provide important insight into how enforcers assess both traditional benchmarking practices and emerging algorithmic pricing tools. The article highlights the agencies' heightened focus on granular, nonpublic, and strategically valuable data—particularly where information is exchanged through intermediaries, embedded in benchmarking reports, or used to generate pricing recommendations. The article concludes by distilling practical guidance for companies and counsel navigating antitrust risk in information exchanges, emphasizing the importance of transparency, data aggregation and aging, and maintaining independent business decision-making in the use of benchmarking and pricing technologies.

I. INTRODUCTION

Deciding when information exchanges threaten competition has long been one of the great challenges in antitrust law. Courts often scrutinize information exchanges as evidence of collusion but few public or private cases grapple with the risks of information exchanges in their own right. So businesses often turned to guidance from federal enforcers to provide a practical framework evaluating information exchanges. And after the agencies withdrew that guidance, companies and counsel instead had to turn to a series of cases filed by the Department of Justice, Antitrust Division ("DOJ") to provide some insight into how enforcers evaluate both traditional and algorithmic information exchanges.

This article examines how the DOJ's *Agri Stats* and *RealPage* cases illustrate the agencies' growing concern with granular, nonpublic, and strategically valuable information — especially when shared through intermediaries, embedded in benchmarking services, or incorporated into algorithmic pricing tools that are not broadly available to all market participants. The *Agri Stats* case further illustrates the DOJ's focus on how information asymmetry between buyers and sellers may harm competition by potentially distorting bargaining power and creating opportunity to facilitate anticompetitive coordination.

This article uses these cases and the remedies enforcers imposed to highlight the practical lessons companies and counsel should draw when evaluating benchmarking practices, pricing technologies, and broader antitrust compliance efforts.

II. BACKGROUND

A. Historical Information Sharing Guidelines

In 1996, the DOJ and the Federal Trade Commission ("FTC") created a framework for the agencies' treatment of information sharing within the healthcare industry.[2] This framework established "safety zones" that generally permitted exchanges of prices or wages among competitors if:

(1) there was third-party management of the exchange;
(2) there was general participation in the industry (at least five providers reported data, none representing more than 25 percent of the weighted basis for that data, and the information was sufficiently aggregated to conceal the prices charged or compensation paid by any particular provider); and
(3) the information provided by survey participants was based on data more than three months old.[3]

Eventually, the FTC and DOJ included this framework in guidance to industries outside of the healthcare sector.[4]

While these safety zones provided a framework for companies to remain in compliance, the agencies have brought enforcement actions premised on improper information sharing and its potential for anticompetitive effects. In *United States v. Utah Society for Healthcare Human Resources Administration*, the DOJ sued the Utah Society for Healthcare Human Resources Administration for conspiring to exchange nonpublic wage information about registered nurses, causing defendant hospitals to match each other's wages and artificially lower the pay of registered nurses in Salt Lake County.[5] In *United States v. Professional Consultants Insurance Company*, the DOJ challenged the Professional Consultants Insurance Company and its actuarial consulting firm members for exchanging competitively sensitive information about their use of contractual limitations of liability in their dealings with clients.[6] And in *United States v. Sinclair Broadcast Group*, the DOJ challenged twelve broadcast television companies for exchanging competitively sensitive revenue information and non-public sales information in certain metropolitan areas.[7]

2 See Dep't of Just. & Fed. Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care (Aug. 1, 1996), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/statements_of_antitrust_enforcement_policy_in_health_care_august_1996.pdf.

3 *Ibid.* at 50.

4 *See* Michael Bloom, *Information Exchange: Be Reasonable*, Fed. Trade Comm'n: Competition Matters (Dec. 11, 2014), https://www.ftc.gov/enforcement/competition-matters/2014/12/information-exchange-be-reasonable; Dep't of Just. & Fed. Trade Comm'n, Antitrust Guidance for Human Resource Professionals, at 5 (Oct. 2016), https://www.justice.gov/atr/file/903511/dl; Dep't of Just. & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors, at 26 n.53 (Apr. 2000), https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf.

5 See *United States v. Utah Soc'y for Healthcare Hum. Res. Admin.*, No. 94-C-282G (D. Utah Sep. 9, 1994).

6 See *United States v. Pro. Consultants Ins. Co.*, No. 1:05-cv-01272-GK (D.D.C. Nov. 26, 2005).

7 See *United States v. Sinclair Broad. Grp.*, No. 1:18-cv-02609 (D.D.C. Dec. 3, 2019); Press Release, Dep't of Just., Justice Department Reaches Settlement with Five Additional Broadcast Television Companies, Including One National Sales Representative Firm, In Ongoing Information Sharing Investigation (Jun. 17, 2019), https://www.justice.gov/archives/opa/pr/justice-department-reaches-settlement-five-additional-broadcast-television-companies-0.

In addition to public enforcement actions, private plaintiffs have also challenged certain information sharing practices. In *Todd v. Exxon Corp.*, for example, the Second Circuit reinstated the plaintiff's antitrust claim, holding that the plaintiff's allegations that fourteen oil and petrochemical companies exchanged information regarding compensation for certain employees were sufficient to state an antitrust claim.[8] Similar claims were raised by plaintiffs in a series of five nurse wage-fixing cases across multiple geographic markets, all of which alleged that hospital employers conspired to suppress nurses' wages by unlawfully exchanging compensation information.[9] And in *Jien v. Perdue Farms, Inc.*, plaintiffs allege that the defendant poultry processors unlawfully exchanged compensation data through regular benchmarking reports that effectively fixed and depressed poultry workers' compensation.[10]

B. 2023 Rescission and Upcoming Guidance

On February 2, 2023, the agencies rescinded the "safety zone" guidance, citing evolving competitive dynamics and technological advancements.[11] The DOJ leadership referred to the policy statements as "outdated" due to technological advancements, like data algorithms, that have "altered the competitive value of different types of data"[12] and that the guidelines were no longer reflective of "market realities, the risk of serious competitive harm, or the full scope of liability under the antitrust laws."[13] Instead, the agencies announced they would use a "case-by-case enforcement approach" to better evaluate conduct that may harm competition in the healthcare industry.[14]

Earlier this year, the DOJ and FTC again changed course. On February 23, 2026, they announced a joint public inquiry regarding additional guidance on collaborations among competitors.[15] That updated guidance has not yet been released. What's more, it may not include as much specificity as some expect: Just a few days after the joint public inquiry was announced, the DOJ cautioned evaluating information exchanges must proceed on a case-by-case basis and "must analyze the precise features of the alleged exchanges.[16]

III. INFORMATION SHARING CASES – AGRI STATS & REALPAGE SETTLEMENTS

Even without new formal guidance, the recent settlements in the *Agri Stats* and *RealPage* cases provide some insights into how the agencies currently evaluate and seek to remedy perceived anticompetitive information exchanges.

A. U.S. et al v. Agri Stats, Inc.

In late 2023, the DOJ, joined by a bipartisan group of attorneys general, filed suit against Agri Stats, Inc. in the District of Minnesota. The complaint[17] alleged that Agri Stats recruited and enabled the nation's largest broiler chicken, pork, and turkey processors to exchange competitively sensitive information regarding prices, output, and costs in violation of Section 1 of the Sherman Act. According to the complaint, each subscribing processor agreed to provide Agri Stats with weekly data downloads directly from its internal ledgers — covering pricing, costs, production volumes, inventories, sales transactions (including customer identity and price charged), wage rates, and other forward-looking supply indicators. Agri Stats then standardized the data and distributed it back to processors in reports that ranked each processor's data against its competitors. Critically, the complaint alleged that Agri Stats enforced a "give-to-get" policy requiring comprehensive data contributions from all subscribers to receive the data, while refusing to make the same information available to other industry participants.

8 See *Todd v. Exxon Corp.*, 275 F.3d 191 (2d Cir. 2001).

9 See *Reed v. Advoc. Health Care*, 268 F.R.D. 573 (N.D. Ill. 2009); *Unger v. Albany Med. Ctr.*, No. 06-cv-0765-TJM-DRH, 2010 WL 4496558 (N.D.N.Y. Aug. 27, 2010); *Cason-Merenda v. Detroit Med. Ctr.*, 862 F. Supp. 2d 603 (E.D. Mich. 2012); *Clarke v. Baptist Mem'l Healthcare*, 641 F. App'x 520 (6th Cir. 2016); *Maderazo v. VHS San Antonio Partners*, No. SA-06-CA-535-OG, 2019 WL 4254633 (W.D. Tex. Jan. 22, 2019).

10 See *Jien v. Perdue Farms, Inc.*, No. 1:19-cv-2521-SAG, 2022 WL 2818950 (D. Md. July 19, 2022).

11 Doha Mekki, Principal Deputy Assistant Att'y Gen., Antitrust Div., Dep't of Just., Remarks at GCR Live: Law Leaders Global 2023 (Feb. 2, 2023), https://www.justice.gov/archives/opa/speech/principal-deputy-assistant-attorney-general-doha-mekki-antitrust-division-delivers-0.

12 *Ibid.*

13 *Ibid.*

14 Press Release, Dep't of Just., Justice Department Withdraws Outdated Enforcement Policy Statements (Feb. 3, 2023), https://www.justice.gov/archives/opa/pr/justice-department-withdraws-outdated-enforcement-policy-statements.

15 Press Release, Dep't of Just., Justice Department and Federal Trade Commission Seek Public Comment for Guidance on Business Collaborations (Feb. 23, 2026), https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-public-comment-guidance-business.

16 Statement of Interest of the United States, *In re Frozen Potato Products Antitrust Litig.*, No. 1:24-cv-11801 (N.D. Ill. Feb. 27, 2026), ECF No. 266.

17 See Second Amended Complaint, *United States v. Agri Stats, Inc.*, No. 0:23-cv-03009-JRT-JFD (D. Minn. Nov. 15, 2023), ECF No. 50.

The complaint alleged that processors used Agri Stats sales reports to identify products priced below the industry average and systematically raised prices on those items. Agri Stats allegedly reinforced these efforts through direct consulting, with account managers identifying specific products and customers for price increases. The complaint further alleged that although Agri Stats ostensibly anonymized its reports, the data was sufficiently granular that processors routinely deanonymized it to identify specific competitors' facilities, prices, and production plans — a practice Agri Stats knew about and took no action to prevent.

After losing a motion to dismiss and a motion for summary judgment, Agri Stats settled the case with the [18]on the eve of trial. The centerpiece of the settlement addressed the information asymmetry at the heart of the enforcers' case: it requires that Agri Stats' performance reports must now be made available for purchase by anyone without requiring the submission of data from subscribers and on terms no less favorable than those offered to processors. This provision directly dismantled the "give-to-get" model that the complaint alleged allowed processors to leverage Agri Stats data against buyers who had no access to the same information.

Many other settlement terms track more traditional information-exchange concerns:

- *Competitively Sensitive Price Information.* Agri Stats must stop publishing sales reports and may not report granular sales pricing data that allows processors to identify products priced below industry averages and target them for increases.
- *Anonymity.* Agri Stats must thoroughly anonymize all data to prevent exchange of actual competitor- or plant-level data. Data must be aggregated across at least three entities, with no single entity representing more than 70 percent of any data field. Participant lists and indicator fields that could indirectly reveal individual firms or plants must be removed from all reports. To prevent reverse engineering, variance fields must be deleted and data fields may not be linked across reports in ways that could disclose plant-level information.
- *Recency.* All data fields in Agri Stats reports must be composed of data that is at least 45 days old (and at least 90 days old for data reflecting production decisions).
- *Compliance.* Agri Stats must also implement data security controls to ensure that employees who transition between customer firms, or between Agri Stats and a customer, cannot access their former employer's confidential or non-anonymized data, and customer contracts must include provisions protecting the confidentiality of competitor data.

B. U.S. et al v. RealPage, Inc

In August 2024 the DOJ and a bipartisan group of ten state attorneys general sued RealPage, Inc.[19] in the Middle District of North Carolina. The complaint[20] alleged both horizontal and vertical agreements to share competitively sensitive information and align rental prices in violation of Sections 1 and 2 of the Sherman Act.

According to the complaint, each landlord agreed to share detailed, nonpublic data — including lease-level information, rent discounts, lease terms, unit characteristics, and prospective renter traffic — with the understanding that RealPage, as intermediary, would use the data to generate pricing recommendations based on this nonpublic data that the landlords could then implement. The complaint further alleged that RealPage reinforced adherence to these recommendations through several mechanisms, including auto-accept functionality, pricing advisors who push for higher acceptance rates, and algorithmic guardrails that favor price increases over decreases. The complaint also alleged extensive direct information-sharing among competing landlords — through bilateral communications, RealPage-hosted user group meetings, and industry-wide calls — covering competitively sensitive topics such as pricing strategies, concession practices, and renewal targets.

On November 24, 2025, RealPage reached a settlement that resolved the DOJ and states' case, including the following terms:[21]

- *Competitively Sensitive Price Information.* RealPage must stop using competitors' nonpublic data to generate pricing recommendations for its licensees. The settlement also more broadly prohibits RealPage from sharing or facilitating the exchange of competitor data among licensees, including through pricing advisors or through the RealPage user group.
- *Anonymity.* RealPage must also no longer train models that identify geographic effects below the state level — effectively preventing hyperlocal competitor benchmarking.

18 See Final Judgment, *United States v. Agri Stats, Inc.*, No. 0:23-cv-03009-JRT-JFD (D. Minn. May 19, 2026), ECF No. 194.

19 In early 2025 the government enforcers added six of the largest multifamily landlords in the United States to the suit.

20 *See* Amended Complaint, *United States v. RealPage, Inc.*, No. 1:24-cv-00710-LCB-JLW (M.D.N.C. Jan. 7, 2025), ECF No. 47.

21 See Final Judgment, *United States v. RealPage, Inc.*, No. 1:24-cv-00710-WLO-JLW (M.D.N.C. Mar. 26, 2026), ECF No. 180.

- *Recency.* RealPage is broadly prohibited from incorporating competitors' nonpublic data into model training with only a narrow exception for historical data at least 12 months old and not from active leases.
- *Compliance.* The settlement also mandates changes to product features that allegedly enabled the hub-and-spoke conspiracy. The settlement requires the auto-accept feature that implemented pricing recommendations to be user-configured and immediately bars RealPage from offering any incentives or impeding a user's ability to override pricing recommendations. The settlement also requires changes to algorithmic guardrails that the government alleged artificially suppressed downward price adjustments and inflated rents using competitor data.

C. Impact and Considerations

Both *Agri Stats* and *RealPage* presented rare opportunities for courts to weigh in on information exchange cases through government enforcement actions. While the settlements deprived the courts of that opportunity, examining the cases and respective consent decrees helps provide insights into how enforcers view these issues.

The *Agri Stats* case, unlike *RealPage*, involves a more traditional form of benchmarking. Users provide their data, it is compiled into a report, and that report is then disseminated to the subscribers of the service. There is no algorithm or pricing recommendation — it is a report of information that gives subscribers data points that they can use to make business decisions. The *Agri Stats* complaint also did not frame the conduct as a form of price-fixing conspiracy. Rather, the enforcers' theory was that the exchange of competitively sensitive information resulted in softened incentives to compete in the marketplace. This alleged lessened competition led to higher prices or lower outputs, resulting in antitrust harm.

By contrast, in the *RealPage* case, the complaint emphasized the number of ways in which competitors delegated their pricing authority to RealPage, knew that other competitors were doing the same, and identified the various opportunities that competitors had to collude among themselves on how to utilize the software to increase rents and suppress inventory. In this way, the theory of the *RealPage* case centered around competitors knowingly using the same pricing algorithm, a theory far closer to traditional price-fixing collusion, a per se violation of the antitrust laws.

Not only do the complaints differ in their framing of the potential harms stemming from information exchange, but so do the consent decrees. In the *Agri Stats* consent decree, the requirement that Agri Stats make its reports available to any interested parties — including buyers of meat products — signals that enforcers may see equal access to competitively sensitive information on both the buyer and seller sides of transactions as important to reducing the potential for anticompetitive effects. The settlement also allows the EMI data to continue to be exchanged on the basis that it was sufficiently aggregated and anonymized, with all market participants able to purchase the data. It appears that from the DOJ's perspective, the potential anticompetitive harm can be ameliorated if the information exchange does not result in significant information asymmetries that impact competition.

The *RealPage* settlement, by contrast, is in some ways more restrictive. RealPage had to agree to stop using competitors' nonpublic data to generate pricing recommendations and more broadly prohibits RealPage from sharing or facilitating the exchange of competitor data among licensees, including through pricing advisors or through the RealPage user group. The settlement also mandated changes to product features that allegedly enabled the hub-and-spoke conspiracy. This more stringent approach to resolving the conduct makes sense considering that the alleged theory of harm more closely resembles tacit collusion to fix prices, conduct treated more harshly under the antitrust laws. That said, the *RealPage* settlement does not terms similar to the transparency requirements imposed on Agri Stats.

Finally, the settlements further diverged in how they treated the need to provide only aged data. The Agri Stats decree imposes a minimum data aging requirement of just 45 days (and only 90 days for production data) while the RealPage settlement prohibits the use of unaffiliated property data that is less than one year old. These differences suggest that federal and state enforcers in fact recognize that threats to competition from information exchanges vary widely in different contexts and that remedies should be tailored to specific industries instead of applied uniformly.

IV. PRACTICAL GUIDANCE FOR ANTITRUST COMPLIANCE

In the wake of the consent decrees in both *RealPage* and *Agri Stats*, it is a good time for companies to revisit antitrust compliance programs, particularly as they relate to benchmarking practices and information sharing. Companies should consider the following practices that raise antitrust risks:

- **"Give to Get" Model and Transparency**: Participation in any benchmarking service that employs a "give to get" model and limits transparency to customers or suppliers may draw unwelcome attention from public or private enforcers. Many benchmarking services advertise themselves as offering exclusive insights in the marketplace by only providing benchmarking reports if a company agrees to provide competitively-sensitive, confidential information. This approach was the focus of the complaints in both *Agri Stats* and *Real Page*, and the *Agri Stats* consent decree emphasized the importance of making data available to the broader public as a means of addressing competitive harm. In fact, the DOJ carved out the EMI data from the consent decree, despite it still reflecting aggregated pricing based on confidential information, since it was publicly available for purchase and was aggregated at a higher level than other Agri Stats data.
- **Use of Real-Time Data:** The *Agri Stats* and *RealPage* settlements focused on limiting the firms' ability to use competitors' data for real-time pricing and output decisions. The settlements require both that data included in benchmarking reports be sufficiently aggregated and sufficiently historical to avoid raising competition concerns. This concept is not new, as these were factors considered under the original "safety zone" framework, and enforcers are clearly doubling down on preventing firms from using real-time market information to make competitive decisions. What has changed, however, is the enforcers' insistence on an industry-by-industry analysis of what counts as appropriately aged data. The contrasting treatment of aged data in *Agri Stats* and *Real Page* makes clear that the enforcers will focus on the competitively significance of that data in the context of a specific industry instead of relying on generic standards.
- **Algorithms Leveraging Non-Public Data**: A key competition concern raised in *RealPage* and other recent private cases involving algorithmic tools is the ability for competitors to knowingly gain access to competitor's information they may not otherwise have access to. Enforcers view this sort of access as potentially softening competitive dynamics and opening up the possibility of indirect or tacit collusion. Companies should consider additional monitoring and prophylactic steps when they must use tools that advertise their leverage of non-public competitor data.
- **Pricing Recommendation Tools**: In *RealPage* and other similar cases, enforcers challenged the specific pricing recommendations the software generated as evidence that users of the software were not making independent pricing decisions and that the recommendations tended to push pricing upward. Use of software that provides specific pricing recommendations that are based on market data raises antitrust risk and should be considered carefully. If a company wants to utilize such tools, it is important for the company to document clearly how it maintains independence in making pricing decisions, including by turning off any auto-implementation features or identifying other factors that are considered in determining price.