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Attn: United States Department of Justice
Antitrust Division
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950 Pennsylvania Ave., NW Room 3322
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# RE: VC-backed Price Fixing via Online Marketplaces

This letter aims to address a growing problem of using Internet technology to price fix services of others and to allocate markets between competitors in three distinct industries: gig economy, residential real estate, and travel booking.

These three industries have been transformed by raked marketplaces and massive VC-funding (known as mega-rounds) that directly support products that offer unprecedented returns due to plain violations of antitrust laws, specifically the Section 1 of the Sherman Act.

According to the public statements made by the Federal Trade Commission, there recent interest in technology by the department is to improve free market forces: "we don't come after companies just because they're big and successful." One has to name an antitrust violation, specifically, where a company has engaged in uncompetitive behavior. This task is incredibly difficult for two reasons.

First, technology companies, specifically the Big Five, operate on many different levels and greatly benefit from organic network effects. For example, Google is sometimes accused of practices of elevating its services and limiting access to rival e-commerce comparison, review, or booking sites. But, unless the government or a private party can prove tying agreements, price-fixing, or market allocation conduct by Google, there is no case. A similar notion can be made about every single search result Google delivers because it is a mega-platform built on the idea of downgrading and elevating information provided by others. Google should be able to build successful products, as long as they are not forcefully bundled, or price-fixed, etc. Yes, it is difficult to compete with Google, but it is possible, and this possibility yields innovation.

Google should not be punished for being successful, otherwise, no startup will take the risk to build the next one.

In this spirit, I offer you the second reason, and a tough pill to swallow. The Federal Trade Commission and the Department of Justice have dropped the ball on regulating Internet marketplaces and it has not identified in timely manner products that operate by price-fixing services of others, or by the allocation of consumers between competitors. These products have flourished in the last five to seven years.

Some of the most successful startups such as Uber Technologies, Lyft Platform, Amazon Home Services, IAC/InterActive Corp (Handy, HomeAdvisor), Redfin (Redfin Partner Program), News Corp (Realtor-dot-com/Opcity), Booking Holdings Inc. (Booking-dot-com) are already traded as public entities.

Others, such as DoorDash, Instacart, Postmates, Opendoor (Opendoor Brokerage, Open Listings), and others are built with massive VC capital in hopes to take price-fixing schemes into an IPO territory shortly. The more time passes, the harder it is to disrupt these schemes and the bigger damage they do to free-market forces.

The advocates for continuous use of these products argue that "this business model has revolutionized an entire section of the economy will be seriously challenged and could screech to a halt ... The same is true for the innovations that we are seeing from home-repair tasks to the grocery-delivery business." These advocates further warns that policies that break this process "undermine the job creators, that penalize the innovators and that target the wealth-creators."

Eventually, building a monopoly is very different from building an amazing technology company. A business that breaks antitrust law suffers from low trust and bad user experience. There is no long-term benefit to price-fixing to speak of. The true power of all technology is rooted in organic scalability of efficiency: from the cotton gin to Google, and the next Google. Startups building a price-fixing monopoly will end up with a massive product with an unsolvable problem. All excellent startups have the vision to improve something in scale, and lawfully. Unfortunately, VC funds do not always share this vision, simply because price-fixing schemes are incredibly profitable when developed into raked marketplaces (marketplaces that operate on a rake set from each transaction.)

The process of imposing a rake, in itself, is not illegal. A business of a middle-man is to aggregate products and to sell them more efficiently, despite the added costs. On the Internet, this dynamic has been turned upside-down where platforms never actually sell or distribute a service, but rather offer a medium for exchange.

A rake on such exchanges often results in higher prices to consumers. For example, if a consumer wants to list a couch on Craigslist, a zero-rake platform, for $100.00, she can list said couch on other platforms as well. If another platform asks, for example, a 30% rake from a sale, the final price of that couch would go up by a similar amount. It is, therefore, highly advantageous for platforms with high take rakes to set prices unilaterally for providers via the service. With the use of price-fixing and price parity agreements, raked marketplaces ensure that the prices offered on their platforms are low enough to gain market share despite an imposed rake.

Today, Internet technology is actively abused to transmit price-fixing, price parity, and similar collusion schemes in plain sight. These schemes are not devised in smoke-filled rooms where big bad competitors decide to agree on how a product or a service will be sold and for how much. Price fixing via the Internet is often proclaimed as revolutionary “consumer-friendly” marketplace practice that uses network effects and heavy advertising strategies to transmit pre-negotiated, pre-set, or algorithmically fixed up-front pricing for services of others. Networks that aggregate such schemes always have a single goal in mind — to receive a cut of the transaction in the process without an obligation to provide a tangible service.

Price fixing via the Internet is the most successful with two types of B2C services. First, price-fixing networks target ubiquitous services, such as ride-hailing, house cleaning, or hotel room bookings. These services can be easily aggregated and often can be sold as either “blind match” or “pre-packaged” for consumers. For example, when ride-hailing companies price fix services for independent drivers, consumers typically don’t care who specifically does the driving, as long as one gets from point A to point B. These low-risk and high-volume transactions are easily subjected to price-fixing in scale.

Second, price-fixing networks target highly overpriced services and rare transactions such as home sale or purchase broker representation, or legal representation of an attorney. Such services can also be sold as a “blind match” if a price-fixing network can severely lower price-fixed rate amounts to entice consumers with massive “savings” over typical rates. In this exchange, nonetheless, consumers are shorted with a lack of transparency, an added exigent “junk” fee, a lack of overall value, and a lack of fair market negotiations with service providers.

Further, the practice of price-fixing closely follows the practice of price parity. Price parity is used to offset a rake laid over by the price-fixing network to conceal the immediate consequence of exigent fees. For example, Online Travel Agencies (OTA’s) are notorious for imposing price parity (also known as rate parity) clauses.

While price parity agreements established by OTA’s may provide consumers with an immediate benefit of booking a hotel room at a “safe” rate, this practice kills the bottom line of hotel operators, causing them to increase prices in the long run.

Further, an exigent rake with an attached price party agreement established by a dominant OTA's limits new and upcoming OTA's to undercut the practice with a lower rake percentage. If a new OTA was to enter the industry with a lower percent rake, hotels would still be required to offer that same price to them, regardless of the lower overall cost of booking due to a lower rake amount. Price parity practice establishes a certainty of a rake for the dominant OTA and prevents new OTA's from entering the industry at the same time. This is a textbook definition of monopolistic practice.

Systematically, price-fixing and price parity in these industries work incredibly well because consumers are sold a pre-arranged service without the "hustle." This practice, however, does not bide well in a free-market economy.

A price-fixing network typically benefits by executing a higher overall amount of raked transactions, which means that fixing prices to lower levels ultimately yields higher overall revenue for the network.

By controlling the price of the service, a price-fixed network can serve "favors" on the demand side with an "abuse" of the supply side on some level. By leveraging their dominance, a price-fixed network can deliver a higher volume of transactions without a downside to having to pay for unreasonably low costs of operations.

Service providers in these schemes are independent contractors or businesses that are responsible for their equipment, time, costs of doing business, and any other contingencies small business owners typically take into account when pricing to perform their services. All costs of operations are absorbed by the party offering the service: Uber drivers maintain their cars, hotel operators maintain their rooms, etc.

Service providers give up entirely negotiation power and, instead, are handed a 15 percent, a 20 percent, and sometimes a 40 percent referral fee or a take rake for the privilege. The revenue from these fees is aggressively turned into ads by networks to gain more attention from the demand side.

Service providers who choose to participate in these schemes are not innocent, instead, these small businesses are direct participants of the price-fixing methodology. Each participant is looking to gain more business while having to avoid paying upfront advertising and marketing costs or having to compete for consumers directly. Hotels that agree to price parity clauses are not innocent either - participation in such schemes is calculated in self-interest, despite a long-term disadvantage.

Uber doesn't hire service providers, each driver is an independent party. "For the avoidance of doubt: Uber itself does not provide transportation services, and Uber is not a transportation carrier" according to the company's Terms of Service. According to Uber, contractors don't work for it, hence workforce of contractors doesn't cost a platform anything, null. According to the NLRB recent ruling, Uber drivers are contractors with "entrepreneurial independence," specifically, not employees.

Similarly, Amazon Home Services service providers are independent providers where "Pros are required to offer the same price on Amazon as they do if you called them directly." Who made the Amazon a big daddy that calculates for independent service providers pricing, and then also live by that pricing outside the platform? The answer is both the Amazon and independent Pros who participate in the scheme.

Of course, such price-fixing agreements have already begun to severely damage the earning power of independent service providers. Each service provider is earning 20% to 30% less than if they were hired as employees and lack basic worker protection rights. No legislation can legally require a platform to hire someone who works for themselves, making laws such as California's AB 5 likely to be successfully challenged, or bypassed.

All prices for services must be determined freely and not by an agreement or coordination with any platform. The DOJ and the FTC should not take a successful zeitgeist fit or an argument that these platforms are "job creators" as an excuse for continued violations of Section 1 of the Sherman Act.

The following are some clear examples of antitrust violations that came to fruition with an undeniable help from VC funds, described in detail.

## Uber Technologies

Like most price-fixing algorithms, Uber's pricing model is a black box.

"For the avoidance of doubt: Uber itself does not provide transportation services, and Uber is not a transportation carrier. It is up to the Transportation Provider to offer transportation services, which may be requested through the use of the Application and/or the Service. Uber only acts as an intermediary between you and the Transportation Provider. The provision of the transportation services by the Transportation Provider to you is therefore subject to the agreement (to be) entered into between you and the Transportation Provider. Uber shall never be a party to such agreement."

Of course, when Uber states that "it shall never be a party to an agreement," this statement simply does not hold water. Each trip is a separate contract between the rider and the driver, yet Uber replaces bargained-for consideration elements in these contracts with a price-fixed amount by calculating an upfront price.

According to Uber, “in the United States, upfront prices are based on the estimated length and duration of the trip. Estimates can vary based on demand patterns and real-world factors like traffic.” Uber holds absolute control over the pricing of all trips, as well as the distribution mechanism of the supply side.

“Before booking a trip, riders are shown the price they’ll pay at the end of the ride. Riders then have the confidence to request more trips, generating more demand for drivers.” As much as this may seem like a great deal to consumers, Uber is not interested in more demand for drivers as much as it is interested in a fee that comes attached to each trip.

Uber has a financial incentive to lower the price for each trip to generate more demand because the revenue of the price-fixing network is tied to the aggregate amount of transactions it can generate.

Uber states that all the transportation services are offered directly by drivers who operate as independent contractors, literally thousands of small independent businesses. At the same time, Uber actively determines the price all these small businesses charge for their services. Uber drivers do not compete against each other on price, nor do they establish pricing. Uber’s direct coordination of pricing, including surge pricing, is not an open market. This is a price-fixed network experience.

Over the last four years, Uber was able to stop legal action initiated by private parties by forcing plaintiffs into arbitration to settle price-fixing disputes privately. While recently passed California’s AB 5 aims to reclassify Uber’s drivers from independent contractors to employees, Uber actively argues that it is a platform and not a transportation service, therefore not bound by this new law.

Regardless, private party lawsuits and laws such as California’s AB 5 are not legitimate substitutes for full enforcement of the Sherman Act.

Uber is correct to argue that it is a platform. Tomorrow, it may begin to aggregate services in some other industry altogether if it so wishes. Without subjecting markets to price-fixing schemes, Internet platforms should be able to fairly aggregate services and pricing of others for the benefit of consumers without an obligation to perform said service directly.

Uber will rightfully continue to claim that it should not be forced to hire drivers. In fact, in California, Transportation Network Companies (TNC’s) are prohibited from hiring drivers by State law that was implemented specifically to allow companies such as Uber to operate.

However, because drivers on Uber Platform are independent contractors and not employees, then Uber operates in a violation of the Sherman Act when it price-fixes services for them. A network that determines prices for others is not a marketplace, it is a price-fixing scheme by default.

A true marketplace is a forum for competitive dealings where service providers actively compete for consumers' business, independently. There is no substitute for an open-market experience.

## Lyft Platform

Lyft isn't any different than Uber. The "competition" between Uber and Lyft is not a competition for the best and most efficient passenger transportation services, but a competition for the best and the most effective price fixing strategy.

"Lyft does not provide transportation services, and Lyft is not a transportation carrier. Lyft is not a common carrier or public carrier. We have no control over the quality or safety of the transportation that occurs as a result of the Rideshare Services."

"Lyft has the authority and reserves the right to determine and modify pricing. The "Driver Fare" for a completed ride consists of a base fare or pickup fare amount plus incremental amounts based on the actual time and distance of the ride, as measured by Lyft."

"As a Driver on the Lyft Platform, you acknowledge and agree that you and Lyft are in a direct business relationship, and the relationship between the parties under this Agreement is solely that of independent contracting parties."

Lyft, too, actively argues that it is a platform and not a transportation service. If drivers who use Lyft Platform are independent contractors and not employees, then Lyft engages in price-fixing of services of others just like Uber does.

In a free-market economy, Lyft and Uber must compete with one another on the amount of rake each charge, not how low one can set prices for participating drivers. In the current situation, neither Uber nor Lyft have an incentive to lower their take rakes significantly.

Instead, both companies have an incentive to charge an exigent rake to promote their price-fixing services as widely as possible. By protecting their exigent rake amounts and pricing services of others at a bare minimum, both Lyft and Uber engage in monopolistic practices that, in effect, disallow competing models to enter ride-hailing business on fair terms.

It is impossible to establish a fair and open marketplace experience for ride-hailing in the United States until price-fixing practices are stopped. As soon as a new ride-hailing startup begins to offer an ability for drivers to compete for consumers independently, both Uber and Lyft will lower their price-fixed rates manually and unilaterally to kill such competition.

## Amazon Home Services

Amazon Home Services allows professionals like house cleaners, handymen, electricians, and plumbers, to sell professional services to Amazon Home Services customers in their area. Trade professionals (ex. Electricians, Plumbers, General Contractors, etc.) are required to be licensed. Professionals engaged with Amazon Home Services pay a revenue share for completed jobs based on the service type and final service price.

Amazon Home Services engages in a price-fixing scheme to solicit such services using the Internet because it unilaterally sets prices and service levels for pre-packaged services on its web site. Pre-packaged services with a defined scope (for example, TV wall mounting, bed assembly, treadmill assembly, move-in or move-out house cleaning) are subjected to 20 percent referral fee for the portion up to $1000 and 15 percent for the portion greater than $1000.

Recurring services purchased as a subscription plan for recurring appointments are subject to a 15 percent referral fee. The fees apply to all professions, all service types, in all locations. Amazon deducts the fees as a percentage of the service price, excluding any taxes collected through Amazon tax collection services.

Amazon Home Services requires service providers to offer a price set by Amazon even if the consumer contacts the service provider directly. “Pros are required to offer the same price on Amazon as they do if you called them directly,” according to the company’s web site.

Such price parity agreement is an active uncompetitive mechanism that provides an online network working as a monopoly to place an exaggerate rake on services of others without the consequence of higher costs to consumers.

Most, importantly, Amazon Home Services unilaterally sets prices for all services and does not allow service providers to compete for consumers’ business in the process.

## HomeAdvisor

HomeAdvisor is another example of a network that subjects independent contractors to a price-fixing scheme.

"HomeAdvisor (through its affiliate, Handy, Inc.), provides certain services labeled "Fixed Price Services." Through Fixed-Price Services, you will pay for your home service upfront and book the time and date of your service through our secure online portal. HomeAdvisor, through the HomeAdvisor platform, offers information and a method to obtain professional services and/or merchandise, but does not and does not intend to provide such professional services or merchandise itself or act in any way as a retailer or manufacturer, or as a cleaning, handyman, or other home-related or moving-related service provider, and expressly disclaims any responsibility or liability for any professional services and/or merchandise provided to the requester, including, but not limited to, a warranty or condition of good and workmanlike services, warranty of fitness for a particular purpose or compliance with any law, regulation, or code. HomeAdvisor is not affiliated with, endorsed or sponsored by any third party merchandise provider or retailer."

Of course, when HomeAdvisor claims that "it is not a party to any contracts for Professional Services," this statement is false. Each service originated on the platform is a contract between users, yet HomeAdvisor replaces bargained-for consideration elements in these contracts with price-fixed amounts by calculating an upfront price.

According to HomeAdvisor, "the rate per hour for a Professional Service depends on factors, such as location and how frequently a Recurrent Service is ordered, and payment terms may increase." HomeAdvisor holds absolute control over the pricing for what it ironically calls "Fixed Price Services."

"Users of the HomeAdvisor Platform for Fixed Price Services purchased and paid for on the HomeAdvisor website, contract for Professional Services directly with other Users. HomeAdvisor is not a party to any contracts for Professional Services. The HomeAdvisor Platform facilitates these contracts by supplying a medium through which individuals seeking to obtain services can connect with individuals seeking to provide services."

HomeAdvisor, in this case, doesn't hire service professionals directly, instead, it originates and controls a price-fixing scheme among independent contractors. No network should be able to determine prices for others, especially on a mass volume and across the United States.

## Redfin Partner Program

Redfin provides real estate representation services. In some cases, this company acts as an Internet referral fee network where it is unable to provide real estate services.

Redfin works with about 3,100 Partner Agents in regions where it has no direct representation in exchange for a 30% referral fee. Approximately 40% of all real estate transactions originated by Redfin are executed by Partner Agents.

Partner Agents pay 30% of their commission back to Redfin when they close transactions. Once Redfin refers a customer to a Partner Agent, that agent, not Redfin, represents the customer from the initial meeting through closing.

In the recent past, Redfin has openly dictated how Partner Agent should set commission rebates and listing rates in the Partner Program.

In the past, Redfin stated that: "When you work with a Redfin partner agent to buy your home, you'll receive up to 15% savings on their commission, subject to a minimum commission of $2,500 and approval by the lender. The refund is based on the net sales price of the home, which is your agreed sales price with the seller minus any credits the seller pays for closing costs, repairs, or other contributions. For example, on a $500,000 home with a 3% commission for the buyer's agent, your refund would be $2,250; for a $250,000 home, your refund would be $1,125. If you purchase a home for less than $120,000, your refund won't quite be 15% of the partner agent's commission. After they receive their minimum commission of $2,500 for helping you buy your home, you'll split the difference. On a $115,000 home, you'd receive a $475 refund. Your agent will confirm your refund amount once the inspection period is complete and any seller contributions have been accounted for."

In the United States, all independent brokerage fees are always negotiable and each real estate agent establishes its policy for a fee structure, amount of commissions, and the sharing of any listing commissions.

To fix, control, recommend, suggest or maintain commission rates or fees for independent agents' services, not directly associated with the company, is an improper practice.

Redfin Corporation is always able to set rates for its brokerage services, but not for services of Partner Agents. By setting listing rates and rebates for independent contractors, Redfin has established one of the first massively utilized price-fixing networks in the United States, raking in millions of USD in revenue.

Redfin Corporation has recently stopped its price-fixing strategy, where a statement on the company's website now reads: "Since Partner Agents aren't employed by Redfin, we can't guarantee our 1%–1.5% listing fee or offer a Redfin Refund for customers who work with a Partner Agent."

However, the company still heavily engages in consumer market allocation practices in their efforts to earn referral fees, instead of providing representation services. Redfin Corporation continues to benefit from an improper price-fixing practice because now Partner Agents are conditioned to offer lower rates to consumers when using the Partner Program.

Consumer brokering is an act of selling information of potential home buyers and home sellers (paid referrals) between real estate brokers, in exchange for a cut of a broker's commission. Brokers on each side of the adopted scheme, cause direct damage to the real estate representation market with reverse competition, anticompetitive market allocation, price-fixing, lack of competition, limited choices to consumers, unnecessary high commissions, and improperly negotiated fees.

Redfin Corporation's Partner Program is a consumer and a market allocation scheme where Redfin effectively agrees not to compete with Partner Agents, or to only compete with Partner Agents on a limited basis.

## Opendoor Brokerage

Opendoor is the parent company of several real estate brokerages, including Opendoor Brokerage Inc., Opendoor Brokerage LLC, and Opendoor Texas Brokerage LLC (the "Opendoor Brokerages").

Opendoor Brokerage is a referral fee network designed to collect fees by matching consumers with local real estate agents willing to pay it. Opendoor Brokerage operates as a licensed real estate brokerage in California under BRE License 02061130, and Texas under TREC License 9008105, but neither broker produce any services that are typically offered by real estate agents and does not represent consumers when buying or selling real estate in any State.

Opendoor Brokerage receives a referral fee, around 1% of the home price, likely 30%-40% of Partner Agent's entire commission when referring consumers to list or buy a home with an Opendoor Partner Agent.

Opendoor Brokerage requires Opendoor Partner Agents to offer 1% of the purchase price to buyers at closing in the form of a commission rebate. The amount is subject to a minimum buyer's agent commission to Opendoor Partner Agents of $3,000, which means it is calculated as the lesser of either 1% of the price of the property consumer buys, or Opendoor Partner Agent's commission minus $3,000. According to Opendoor Brokerage, this amount may be prohibited or reduced on the basis of the purchase type (e.g., short sale), lender requirements, loan type (e.g. FHA, VA), or the law.

By fixing amounts of buyer's rebates for independent brokers across the United States, Opendoor Brokerage operates with a sole purpose to collect referral fees, where such service effectively results in lower quality of service, pay-to-play bias, and uncompetitive price-fixing with agents willing to participate.

## Open Listings

Open Listings is a multi-state broker rebates buyer part of the commission it receives. In some cases, Open Listings acts as an Internet referral service where it sets rebates for independent real estate brokers that do not work for Open Listings directly.

Open Listings' operations as a referral network result in an inefficiency known as reverse competition. Once Open Listings refers a customer to a Partner Agent, that agent, not Open Listings, represents the customer from the initial meeting through closing.

Open Listings dictates that Partner Agent rebates 50% of their commission to receive a referral, while Open Listings takes a commission cut after the transaction is complete.

This is a plain price-fixing agreement between real estate brokers.

## Booking-dot-com

Booking-dot-com is wholly owned by the Booking Holdings Inc. Over 90% of Booking Holdings Inc. revenues come from booking commissions. The company is ranked as one of the largest in the United States corporations by revenue.

Booking-dot-com business model aggregates hotel offerings around the world and takes a commission on each booking between 10 and 30 percent, typically 20 percent. In the United States, the company establishes price party contracts with all hotels. With Booking-dot-com, hotels sometimes choose to pay for higher ranking with a higher commission rate.

Online travel agencies (OTA's) do not care which hotel is booked by the user, as long as the hotel is booked on the platform the agency receives a commission. Thus OTA's can heavily advertise hotels via the Big Five channels, far outperforming any individual ad spending by any individual hotel or a hotel chain.

OTA's receive a higher economic benefit per ad as a result. In effect, hotels are forced to participate with OTA's or lose the majority of their bookings because they receive lower per-ad benefit over hotel aggregators.

To hide their exigent commission Booking-dot-com further engages in price parity (rate parity) contracts with all hotels that it lists (except in countries where rate parity has already been outlawed.)

This means that hotels can't offer the same rooms at cheaper rates on the hotel's direct web pages. Without such price parity agreements, hotels would be able to list rooms for a lesser rate directly because there is no commission attached. Price parity clauses are, in effect, price-fixing schemes.

Booking-dot-com argues that their business model requires price parity clauses agreements to exist, however, this logic fails to consider the weight of US antitrust regulations.

The existence of the Booking-dot-com is secondary to the existence of fair market practices in the booking industry. Booking-dot-com should never be able to govern the pricing strategy of any business that it has no direct control over. The free market is not here to accommodate Booking-dot-com poor business model.

By employing rate parity agreements, Booking-dot-com has created a monopoly where it has no real incentive to lower commissions. By continually turning ads into commissions, Booking-dot-com further uses rate parity clauses to prevent competing travel agents to offer lower hotel prices as well and removes any incentive for alternative OTA's to lower their commissions.

In their feeble defense, Booking-dot-com claims that hotels are free to walk away from participating in price parity clauses. However, this is not a legitimate excuse for breaking antitrust laws when engaging with hotels that do decide to participate in the scheme.

Obviously, from a legal perspective, anyone is free to walk away from a scheme that breaks an antitrust law, but that doesn't solve the actual problem if others choose to participate in said scheme. Hotels that walk away from Booking-dot-com lose the majority of their bookings, making this scheme a vicious circle that can only be broken down with enforcement of the Sherman Act.

Today, Booking-dot-com wants to establish a rake on a hotel booking experience, tomorrow another company wants to establish a rake on some other B2C industry with parity clauses. Raked marketplaces must suffer from an exigent rake on any service, not benefit from it and have it guarded with the use of parity clauses.

Consumers must be able to have an incentive to seek out rake-less or low-raked marketplaces that help them archive that same results.
Competing marketplaces must be able to undercut exigent rakes established by others and be able to offer lower overall rates to consumers as a result.

Hotel operators must be able to freely determine which services promote bookings fairly by being able to offer alternative pricing as they wish.
If a service can provide a hotel with a higher booking volume subject to a lower rake, that service must have a competitive advantage. The poor and monopolistic revenue model of Booking-dot-com is not an excuse for nationwide price parity.

## Raked Marketplaces vs Open Marketplaces

Without a doubt, in 2020, marketplaces rule major Internet channels and e-commerce for almost every B2C sector of the US economy. The difference is how.

For example, real estate commissions in the United States are some of the highest in the world and the industry operates on "standard" kickbacks due to high-amount transaction values and rare-event nature of each transaction. This is a legitimate problem for consumers because junks fees and uncompetitive commission rates make it more difficult to buy and sell homes, which subsequently increases the cost of owning a home. Uncompetitive fees slowly erode the value of owning and buying every single home in the United States.

One way to solve this, a HomeOpenly way, is to establish an Open Marketplace where real estate professionals can compete on fair terms, without broker referral fees or other forms of pay-to-play. This is a value-added experience an Internet technology can provide to the housing sector because unbiased information can be aggregated and transmitted over the network very efficiently.

The other way to resolve it, Opendoor Brokerage way, is to price-fix rates of agents on a massive scale across the United States and place a 30% to 40% rake on each transaction for the privilege. Because typical commissions are highly overpriced, this methodology is also possible.

In Opendoor Brokerage scenario:

A consumer (a buyer) receives a pre-set benefit (1% of the purchase price to buyers at closing in the form of a commission rebate, subject to a minimum buyer's agent commission to Opendoor Partner Agent of $3,000)
An Opendoor Partner Agent receives a "free business" and 70%-60% of the remaining buyer's agent commission.
Opendoor Brokerage gets a referral fee, anywhere between 30%-40% of the Opendoor Partner Agent commission and "successfully" saves a buyer 1% in rebates.

Win-win-win? No, it isn't.

If raked marketplaces begin to implement similar schemes in violation of the Sherman Act across every B2C sector in the United States, we will end up with a price-fixed and a raked experience for everything. Price fixing can be implemented anywhere, anytime into a great profit margin, but such methodology does not deliver value.

Who is Opendoor Brokerage to decide that a 1% rebate is an acceptable price-fixed amount?

Does it matter if someone is buying a home worth 100K or 100M?

In Texas, or California?

What if one agent has 10 years of experience, while another has been around for 10 days?

Opendoor Brokerage is a real estate broker, like any other, it must produce a service like one, not to set random rates for independent professionals to collect kickbacks.

When faced with such self-serving schemes in action via the Internet, any industry will suffer from a lack of independent and proper competition.

“A defendant is allowed to argue that there was no agreement, but if the government or a private party proves a plain price-fixing agreement, there is no defense to it. Defendants may not justify their behavior by arguing that the prices were reasonable to consumers, were necessary to avoid cut-throat competition, or stimulated competition.”

In my request, every company I have mentioned to you has a price-fixing agreement in place as well as a dominant position in the market that systematically argues for “reasonable” consumer benefit. The problem is that none of it is done for consumer benefit at all, instead, these schemes are established to place and to protect an exigent rake on services delivered by others.

Uber Technologies establishes how independent drives are to charge riders for each trip algorithmically, thus entering into thousands of price-fixing agreements.

Lyft Platform establishes how independent drives are to charge riders for each trip algorithmically, thus entering into thousands of price-fixing agreements.

Amazon Home Services establishes how independent home professionals are to charge for any given service unilaterally, thus entering into thousands of price-fixing agreements. Further, it requires price parity from service providers.

HomeAdvisor establishes how independent home professionals are to charge for any given service unilaterally, thus entering into thousands of price-fixing agreements.

Opendoor Brokerage and Open Listings both fix buyer's rebates for independent buyer's agents as a means to deliver the appearance of savings, thus entering into thousands of price-fixing agreements.

Booking-dot-com forces hotel operators to abide by price parity clauses, thus entering into thousands of price-fixing agreements.

Unless these schemes are brought down by the FTC and the DOJ, new marketplaces and startups will not have an incentive to build better Internet experiences subject to a competitive or a zero rake.

Furthermore, great deals of money will continue to flow to finance old and new price-fixing schemes from dozens of venture capital funds because price-fixing is very profitable.

Price fixing agreements between networks and thousands of service providers prevent the next generation of Open Marketplaces to offer genuine savings to consumers and give service providers an ability to set their prices for value-added experiences.

## What is the author's role in the situation?

I currently serve as a CEO HomeOpenly. HomeOpenly is an Open Real Estate Marketplace™ designed and built to improve the homeownership experience in the United States.

HomeOpenly is a technology company that designs, builds, and maintains a series of online marketplace solutions with focus on home search, automated valuation modeling (AVM), home buyer's and seller's representation services, mortgage origination, refinance, home insurance, renovation, design, staging, home inspections, home security, moving, home maintenance, title, escrow, cash offer stand-in programs, home warranty, and other real estate products and services.

HomeOpenly operates subject to a 0% rake as our primary competitive advantage to establish a significantly lower fee schedule for service providers with the use of network effects. Our efforts are actively hampered by anticompetitive price-fixing practices of Opendoor Brokerage, Redfin Partner Program, Open Listings, Amazon Home Services, and HomeAdvisor.

Practices of Uber, Lyft, and Booking-dot-com further promote price-fixing and price parity practices into many B2C verticals. To "Uberize" industry is now a term that means to "modify a market or economic model by the introduction of a cheap and efficient alternative."

*To break antitrust regulations is not an "efficient alternative."*

Uber publicly states that: "we believe the law is on our side and that's why in four years no anti-trust agency has raised this as an issue and there has been no similar litigation like it in the U.S."

This is a legitimate question for the FTC and the DOJ — why haven't you raised this issue? Exactly how many B2C industries need to become "Uberized" before the legal mechanism designed to protect free-market economy begins to act?

With my request to the Department of Justice and the Federal Trade Commission, I am seeking a fair and open competitive environment to develop our service.

Successful implementation of an Open Marketplace™ platform in the real estate industry requires full enforcement of existing antitrust laws that are enacted to protect US consumers.

**As long as VC-backed raked marketplaces can price-fix services of independent service providers in exchange for referral fees or an exigent take rake, open marketplaces across all B2C industries will continue to operate at a competitive disadvantage. All prices and levels of service must be set independently, and only by the actual service/product providers across the entire Internet.**

Sincerely,

Dmitry Shkipin

CEO at HomeOpenly