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FTC Clears Zillow-Trulia Merger Without Conditions

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In a ruling on February 13, the FTC unconditionally approved the Zillow-Trulia merger after an intensive six-month antitrust review. Despite reported concerns “that the merger might concentrate too much power in one company,” the FTC ultimately decided to “bless” the Zillow-Trulia combination.¹

The number one and number two most-visited online home shopping sites in the US, Zillow and Trulia announced their intent to merge on July 28, 2014. The FTC’s Mergers III section opened an investigation shortly thereafter, with a Second Request issued to the parties on September 3rd. A six-month investigation followed, with the parties, represented by antitrust counsel Beau Buffier and Heather Kafele from Shearman & Sterling (Zillow) and Scott Sher from Wilson Sonsini Goodrich & Rosati (Trulia) and supported by economic teams from NERA (Graeme Hunter and Lawrence Wu) and Charles River Associates (Michael Salinger and Jeff Prisbrey).

Various news reports and analysts had speculated that the transaction would face significant antitrust headwinds. For example, after the companies disclosed the issuance of Second Requests by the FTC, a Wall Street Journal article noted that “antitrust enforcers at the Federal Trade Commission [would] take a long look at the deal.”² The Wall Street Journal noted concerns “that a combined Zillow-Trulia could have such a dominant online presence it could raise prices to advertise on the sites” and noted that a key issue for the FTC was whether the market should be measured by all real estate agent advertising or only online advertising.

During the fast-paced investigation, the legal and economic teams were able to marshal evidence that the transaction would not create a dominant national real estate portal or harm real estate agents or consumers, including statements from real estate agents and brokers (and others in the industry) and reports from leading industry experts. Crucially,

¹ <http://www.latimes.com/business/realestate/la-fi-ftc-zillow-trulia-merger-20150213-story.html>.

² <http://www.wsj.com/articles/review-of-zillow-trulia-merger-hinges-on-home-sales-ad-pie-1410208093>.

economic experts were able to demonstrate through econometric evidence that the merger would not harm real estate professionals or consumers.

Yesterday, on February 19, Commissioners Ohlhausen, Wright and McSweeney released a closing statement, noting in detail the reasons the FTC decided to close its investigation. After considering numerous qualitative and quantitative submissions by the parties and after an intensive market investigation, the Commission concluded that:

- First, there was insufficient evidence to support a market limited to real estate portals.
- Second, quantitative evidence did not support the Commission's theory of harm. The Statement notes that "staff was unable to develop quantitative evidence showing that a significant portion of Zillow's customers would turn to Trulia in the face of a price increase or vice versa" and that "data analysis did not show a robust relationship between Zillow's pricing to advertisers and Trulia's presence in a particular geographic market."
- Third, the Commission found no evidence of innovation reduction or negative effects on consumers, finding that the "combined entity will continue to have strong incentives to develop new features in order to grow its consumer audience and thereby increase its advertising revenue."

The FTC's conclusion that Zillow and Trulia "represent only a small portion of agents' overall spend on advertising," and that real estate agents "use numerous methods in addition to the platforms operated by Zillow and Trulia,"³ is consistent with the parties' repeated assertions that the appropriate market definition includes all real estate advertising, in which the parties currently have a very small share (<5% of all real estate advertising and <10% of all real estate agents).

The Zillow/Trulia review forced the FTC to grapple with a rapidly changing high-tech marketplace. Since Zillow and Trulia launched in 2006, numerous new entrants have followed. During the merger review period alone, the marketplace saw the acquisition of home shopping portal Realtor.com by Rupert Murdoch's News Corp., along with significant new capital injections by third-party investors into Zillow rivals Redfin.com and Movoto. The parties argued, and the FTC ultimately agreed, that these rivals would spur Zillow to continue to innovate and to seek to grow its consumer audience.

While it is difficult to draw firm conclusions from a single transaction, the Zillow/Trulia merger appears to send a clear signal that the FTC is prepared to take seriously economic evidence along with corroborating third-party statements that support a broad market definition. Zillow's experience suggests that parties with deals before the FTC should consider engaging with economic and industry experts as a core part of their merger investigation strategy, especially in cases where public statements are likely to paint the parties as rivals.

³ Statement of Commissioner Olhausen, Commissioner Wright, and Commissioner McSweeney Concerning Zillow, Inc./Trulia, Inc., FTC File No. 141-0214, February 19, 2015, available at http://www.ftc.gov/system/files/documents/public_statements/625671/150219zillowmko-jdw-lmstmt.pdf.