

Recent Benchmarking Suits Highlight DOJ Enforcement Risks

By **Lindsey Strang Aberg and Tiffany Rider** (May 19, 2026, 5:04 PM EDT)

When the U.S. Department of Justice withdrew its information-sharing guidelines in 2023, it announced that rather than replacing those guidelines, it would employ a case-by-case enforcement approach.[1] Businesses have spent the three years since then stuck in limbo.

On the one hand, many businesses view benchmarking as a critically important way to stay competitive. On the other hand, they must proceed with caution amid the lack of clarity on how the DOJ would propose to differentiate legal benchmarking from illegal benchmarking.

Negotiated consent decrees involving RealPage Inc. and, most recently, Agri Stats Inc. are at least beginning to shed some light on this important question.

Recent Cases

On May 7, the DOJ **resolved** its case against Agri Stats, avoiding a jury trial that was set to begin on May 18 in the U.S. District Court for the District of Minnesota.[2]

The DOJ initially sued Agri Stats in September 2023, alleging that various benchmarking reports that Agri Stats had been providing to chicken, pork and turkey processors for years — and in some cases, decades — "enable[d] and encourage[d] processors to increase prices and restrict output to boost profits industry-wide." [3]

In response to the lawsuit, Agri Stats maintained that the opposite is true — the reports helped protein processors expand and become more efficient, resulting in lower prices.[4]

With the settlement, the parties have agreed to disagree about whether Agri Stats reports have promoted or hindered competition.[5] Nevertheless, as a condition of the settlement, Agri Stats agreed to make an array of significant changes to its benchmarking services to satisfy the DOJ and state enforcers.[6]

Among other things, Agri Stats will stop offering its sales reports, which allegedly showed subscribers how their own prices from the prior week compared to industry average prices.

The Agri Stats settlement follows a proposed settlement between the DOJ and RealPage that was announced in November.

The DOJ sued RealPage in August 2024, alleging that its revenue management software enabled landlords to share confidential, competitively sensitive information and align their rents.[7] The DOJ **agreed to drop** that suit only after RealPage committed, among



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other things, to stop using nonpublic, competitively sensitive data to fuel its rental price recommendations.[8]

At the outset, it is difficult to draw overarching conclusions from the separate enforcement actions against RealPage and Agri Stats, especially as there are obvious and meaningful differences between the two services.

Among other things, Agri Stats published straightforward data reports, some of which included plant-level data and rankings that the DOJ alleged could be easily deanonymized. None of the reports provided pricing recommendations, although the DOJ alleged that users could rely on Agri Stats' weekly sales reports to identify opportunities to raise prices.

In contrast, the DOJ's focus in the RealPage action was on revenue management software that used an algorithm to analyze competitor data to generate user-specific pricing recommendations.

It is also important to note that both consent decrees were negotiated in the context of the specific services and industries at issue, and only bind those companies.

The DOJ's Enforcement Priorities

The DOJ's approach to suing — and then settling with — both companies can inform the level of antitrust risk surrounding the use of benchmarking services as a general matter. The terms of the settlements reached in these two recent enforcement actions suggest that the DOJ is adopting an aggressive approach to enforcement, taking issue with the following.

Price Recommendations

The DOJ may have concerns about any service — whether it is a dynamic pricing tool or a static benchmarking report — that relies on nonpublic, competitively sensitive data to generate pricing recommendations.

In RealPage, this concern was addressed primarily through a commitment that RealPage would stop using nonpublic competitor data to generate its pricing recommendations.

Price Comparisons

The DOJ apparently does not see a major difference between pricing recommendations and reports that show a side-by-side comparison between a seller's own historical prices and industry average prices. The DOJ's logic appears to be that if a user is confronted with a comparison showing that its own price was lower than the average, it will draw the conclusion that it should raise its price.[9]

Because Agri Stats agreed to permanently discontinue its sales reports, it will no longer offer any reports that provide these types of comparisons. Agri Stats also agreed not to add new offerings that "in any way compare" user prices to industry prices.[10]

Granular Data

Data granularity is clearly a concern for the DOJ, although how granular is too granular is a fact-specific inquiry.

In RealPage, the parties' settlement required the company to stop training its models using market data that is any more granular than state level, which is quite broad in the context of apartment rental prices.[11]

For Agri Stats, the termination of the sales reports addresses the allegedly granular price data reporting that the DOJ challenged. Agri

Stats is also permitted to continue publishing its operations reports that are not price-focused, with some modifications, in part to address concerns about users' purported ability to identify specific competitors in the anonymized reports.

Going forward, Agri Stats can report only aggregated or average values — not anonymized plant-specific results — and must ensure that results reflect at least three processors, with no processor representing more than 70% of the data.[12]

Recent Data

It remains unclear exactly how old data must be before the DOJ considers it sufficiently historic. However, it is clear that the answer to that question depends on the context.

For example, RealPage got the DOJ's approval to continue offering pricing recommendations only by agreeing to stop using nonpublic competitor data entirely — no matter how old — to generate those recommendations. That said, RealPage was permitted to continue using nonpublic competitor data to train its underlying models, provided that such data be "historical or backward-looking" and aged for at least 12 months.[13]

In Agri Stats, it seems that the DOJ's tolerance for recent data depended on whether it was price or nonprice data at issue. For example, the DOJ apparently considered the approximately one-week-old pricing data in the sales reports to be too recent, in addition to being too granular.

The Agri Stats sales reports are being discontinued, a change that begs the question of whether lagging the pricing data was also an option on the table and, if so, how much of a lag would have satisfied the DOJ.

In the context of nonprice data, the DOJ has required Agri Stats to commit to ensuring that the data in its operations-focused reports is at least 45 days old on average, which is the status quo for those reports.

Certain Nonprice Data Reporting

Despite allegations centered on the supposed price effects of Agri Stats' usage, the DOJ demanded changes to Agri Stats' operations-focused reports as well. The settlement requires Agri Stats to stop reporting anonymized plant-level data, which historically allowed processors to compare the efficiency of their own processing plants to anonymous competitor plants across various metrics.

Going forward, Agri Stats will have to remove certain fields entirely, aggregate the results of other fields across plants, and stop showing companies where they rank against other participating plants in the reports.[14]

Disclosing Participation

Agri Stats always reported data in an anonymized format, but the DOJ alleged that its anonymization efforts were insufficient. The parties' settlement addresses such concerns, in part by requiring Agri Stats to stop including participant lists in its benchmarking reports, thereby removing users' access to information about which competitors' data is reflected.

"Give to Get"

Benchmarking providers, including Agri Stats, have historically sought to promote data integrity and prevent free-riding by requiring companies to share their own data in order to subscribe. As a practical matter, this means that only sellers of a product or service — such as chicken processors — and not the buyers of that service — like chicken purchasers — could access certain Agri Stats reports.

Now, the DOJ is requiring Agri Stats to make the vast majority of its data reporting available to anyone who wants to buy it.[15]

The flip side of the DOJ's hostility to "give to get" is that providers apparently have significant leeway when it comes to reporting that is freely available to both sides of the market. This has always been the case for the daily and weekly price reports offered by Agri Stats' subsidiary, Express Markets Inc.

The DOJ did not require EMI to pare back those reports, explaining that "[b]ecause EMI's price reports are less detailed and provided to all interested parties, not only meat processors, they were not the focus of the case." [16]

The DOJ's apparent acceptance of EMI's reporting on aggregated pricing information — despite the fact that EMI also is fueled by processors' confidential sales data — is informative. It is important to keep in mind that in addition to its reports being publicly available for purchase, EMI only reports nationwide industry average prices, which are not broken down by region or customer type.

To ensure sufficient aggregation going forward, Agri Stats also committed that if it expands the product categories that are represented in the EMI reports, it must first certify that at least five processors produced products in each such category during the previous three months, with no processor representing more than 50% of sales in that category over that period.[17]

Conclusion

While some guidance is better than none, the enforcement environment remains murky. Among other things, questions remain about how lagged and aggregated data must be before the DOJ would deem it safe to disseminate.

The DOJ's apparent focus on solving the claimed information asymmetry problem with Agri Stats also raises a host of questions about whether making reports freely available to anyone who wants to purchase them is a cure-all for competition concerns. And with no remaining DOJ enforcement actions against benchmarking providers currently pending in the courts, it could take years for more clarity to emerge.

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[1] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Withdraws Outdated Enforcement Policy Statements (Feb. 3, 2023), <https://www.justice.gov/opa/pr/justice-department-withdraws-outdated-enforcement-policy-statements>.

[2] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Requires Agri Stats to End Exchange of Competitively Sensitive Information Among Nation's Largest Meat Processors that Suppressed Competition and Increased Prices for Decades (May 7, 2026), <https://www.justice.gov/opa/pr/justice-department-requires-agri-stats-end-exchange-competitively-sensitive-information>.

[3] Complaint, United States of America v. Agri Stats Inc., No. 23-cv-3009 (D. Minn. Sep. 28, 2023), ECF No. 1 at 2.

[4] Press Release, Agri Stats, Inc., DOJ Lawsuit Against Agri Stats is Wrong on the Law and Bad for Consumers (Sept. 28, 2023), <https://www.agristats.com/doj-lawsuit-against-agri-stats-is-wrong-on-the-law-and-bad-for-consumers/>.

[5] Separate private class action lawsuits targeting Agri Stats reports relating to chicken (*In re Broilers Antitrust Litigation* , No. 16-cv-08637 (N.D. Ill)), pork (*In re Pork Antitrust Litigation* , No. 18cv-1776) (D. Minn), and turkey (In Re Turkey Antitrust Litigation, No. 19-cv-08318 (N.D. Ill)) remain pending.

[6] Shortly after filing its initial complaint, the DOJ was joined by a small coalition of state AGs. Amended Complaint (D. Minn. Nov. 6, 2023), ECF No. 30; Second Amended Complaint, (D. Minn. Nov. 15, 2023), ECF No. 50.

[7] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters (Aug. 23, 2024), <https://www.justice.gov/archives/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters>.

[8] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Requires RealPage to End the Sharing of Competitively Sensitive Information and Alignment of Pricing Among Competitors (Nov. 24, 2025), <https://www.justice.gov/opa/pr/justice-department-requires-realpage-end-sharing-competitively-sensitive-information-and>.

[9] Complaint, United States of America v. Agri Stats Inc., No. 23-cv-3009 (D. Minn. Sep. 28, 2023), ECF No. 1 at 37-38.

[10] Proposed Final Judgment, United States of America v. Agri Stats Inc., No. 23-cv-3009 (D. Minn. May 7, 2026), ECF No. 742.2 at 13.

[11] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Requires RealPage to End the Sharing of Competitively Sensitive Information and Alignment of Pricing Among Competitors (Nov. 24, 2025), <https://www.justice.gov/opa/pr/justice-department-requires-realpage-end-sharing-competitively-sensitive-information-and>.

[12] Proposed Final Judgment, United States of America v. Agri Stats Inc., No. 23-cv-3009 (D. Minn. May 7, 2026), ECF No. 742.2 at 17.

[13] *Id.* (indicating RealPage was required to "cease using active lease data for purposes of training the models underlying the software, limiting model training to historic or backward-looking nonpublic data that has been aged for at least 12 months").

[14] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Requires Agri Stats to End Exchange of Competitively Sensitive Information Among Nation's Largest Meat Processors that Suppressed Competition and Increased Prices for Decades (May 7, 2026), <https://www.justice.gov/opa/pr/justice-department-requires-agri-stats-end-exchange-competitively-sensitive-information>.

[15] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Requires Agri Stats to End Exchange of Competitively Sensitive Information Among Nation's Largest Meat Processors that Suppressed Competition and Increased Prices for Decades (May 7, 2026), <https://www.justice.gov/opa/pr/justice-department-requires-agri-stats-end-exchange-competitively-sensitive-information>.

[16] *Id.*

[17] Proposed Final Judgment, United States of America v. Agri Stats Inc., No. 23-cv-3009 (D. Minn. May 7, 2026), ECF No. 742.2 at 12.

