

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v The Toronto Real Estate Board*, 2016 Comp. Trib. 8
File No.: CT-2011-003
Registry Document No.: 409

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

B E T W E E N:

The Commissioner of Competition
(applicant)

and

The Toronto Real Estate Board
(respondent)

and

Canadian Real Estate Association
(intervenor)



Dates of hearing: 20120910 to 20120914, 20120918 to 20120919, 20120924 to 20120925, 20120927 to 20120928, 20121002 to 20121003, 20121009 to 20121010, and 20121017 to 20121018 (Initial hearing); 20150921 to 20150924, 20151005 to 20151007, and 20151102 (Redetermination hearing); 20160602 (Remedy hearing)

Before: P. Crampton C.J., D. Gascon J. (Chairperson) and Dr. W. Askanas

Date of order: June 3rd, 2016

ORDER FURTHER TO THE REASONS ISSUED ON APRIL 27, 2016

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the “**Commissioner**”) pursuant to section 79 of the *Competition Act*, RSC 1985, c C-34, as amended (the “**Act**”), for an order prohibiting the Toronto Real Estate Board from engaging in certain anti-competitive acts in connection with the supply of residential real estate brokerage services in the Greater Toronto Area;

[2] **AND FURTHER TO** the reasons issued by the Tribunal on April 27, 2016 pursuant to which the Tribunal partially granted the application brought by the Commissioner;

[3] **AND FURTHER TO** the remedy hearing held on June 2, 2016 to hear the parties’ submissions on the specific terms of the order to be issued by the Tribunal;

NOW, THEREFORE, THE TRIBUNAL ORDERS AS FOLLOWS:

(a) In this Order:

- (i) “**AVP**” means affiliated VOW partner;
- (ii) “**Disputed Data**” means the data in the MLS® System Database, including the archived data, with respect to sold and Pending Sold homes, withdrawn, expired, suspended or terminated listings, and offers of commission to brokers who represent the successful home purchaser. For greater certainty, “Disputed Data” does not include the agreed price of a Sold Conditional Listing until the conditions are satisfied or waived but does include change(s) in status. The archived “Disputed Data” shall be made available by TREB to its Members and Members’ AVPs upon special request and need not be included in each and every update of the VOW Data Feed itself.
- (iii) “**Information**” means (i) the Disputed Data and (ii) the data and categories of data provided in the VOW Data Feed as of the date of this Order for all active listings that exist from time to time in the MLS® System Database;
- (iv) “**Members**” means the real estate brokers and salesperson members of TREB;
- (v) “**MLS® System Database**” means the database in the TREB MLS® System that contains current active listings and an archive of inactive listings on properties listed on the MLS® System;
- (vi) “**Pending Sold**” means a sale that has not yet closed and is “firm” in that the sale does not have or no longer has any conditions to closing;

- (vii) **"Sold Conditional Listing"** means a sale where the buyer and seller have executed an agreement of purchase and sale with conditions precedent to closing;
 - (viii) **"TREB"** means the Toronto Real Estate Board;
 - (ix) **"VOW"** means a password-protected virtual office website, which is an area of a brokerage's website where consumers can access and search a database containing the Information;
 - (x) **"VOW Data Feed"** means the VOW data feed that TREB makes available to its Members; and
 - (xi) **"VOW Policy and Rules"** means TREB's MLS rules and policies in respect of VOWs.
- (b) TREB shall not exclude the Disputed Data from the VOW Data Feed.
 - (c) TREB shall not preclude or restrict its Members' use of the Information in the VOW Data Feed on any device (including but not restricted to computers, tablets, or smartphones), but TREB may limit Members' use to being directly related to the business of providing residential real estate brokerage services.
 - (d) TREB shall not preclude or restrict its Members' display on their VOWs, on any device (including but not restricted to computers, tablets, or smartphones), of the Information, whether obtained from the VOW Data Feed or another source, except that TREB may prohibit display on a VOW of a listing or property addresses of any seller who has affirmatively directed the listing brokerage to withhold the seller's listing or property address from display on the internet. For greater certainty, this paragraph does not affect TREB's ability to require Members to identify Information obtained from outside the MLS® System Database and its source.
 - (e) For greater certainty, unless instructed otherwise by the seller, TREB may prohibit display on a VOW of the seller's name and remarks or instructions intended for Members only, including security information, instructions for access, when the home will be empty or occupied, the seller's mortgage information and personal information about the seller and residents of the home.
 - (f) TREB shall continue to make available to Members and Members' AVPs the VOW Data Feed containing the Information, on terms and conditions that are no more onerous or restrictive in any respect than those that apply or are in force as of the date of this Order.
 - (g) TREB shall make available the Information in the VOW Data Feed at the same time as it makes the Information available through Stratus (or any other means used to provide the Information to Members, with the exception of GeoWarehouse).

- (h) TREB shall implement paragraphs (b) to (g) of this Order no later than sixty (60) days from the date of this Order.
- (i) TREB shall provide the Commissioner sixty (60) days' written notice of any proposed change to its VOW Policy and Rules, agreements, or practices concerning VOWs.
- (j) Should TREB decide to pass along to its Members the costs to be incurred to comply with the terms of this Order, such costs shall be shared equally by all TREB Members.
- (k) Within thirty (30) days from the date of this Order, TREB shall pay to the Commissioner \$215,000 in respect of Tariff B legal costs, \$113,000 in respect of disbursements other than those relating to expert witnesses, and \$1,500,000 in respect of disbursements relating to expert witnesses.

DATED at Ottawa, this 3rd day of June, 2016.

SIGNED on behalf of the Tribunal by the Panel Members.

- (s) Paul Crampton C.J.
- (s) Denis Gascon J. (Chairperson)
- (s) Dr. Wiktor Askanas

Appearances

For the applicant:

The Commissioner of Competition

John F. Rook, Q.C.

Emrys Davis

Andrew D. Little

Tara DiBenedetto

For the respondent:

Toronto Real Estate Board

Donald S. Affleck, Q.C.

David N. Vaillancourt

Fiona Campbell

For the intervenor:

Canadian Real Estate Association

Sandra A. Forbes

Michael Finley

James Dinning