

CT-2011-003

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

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

**AND IN THE MATTER OF** certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.

**B E T W E E N :**

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| COMPETITION TRIBUNAL<br>TRIBUNAL DE LA CONCURRENCE<br><b>RECEIVED / REÇU</b><br>CT-2011-003<br>May 15, 2015<br>Jos LaRose for / pour<br>REGISTRAR / REGISTRAIRE |       |
| OTTAWA, ONT   | # 310 |

**COMMISSIONER OF COMPETITION**

**Applicant**

**AND**

**THE TORONTO REAL ESTATE BOARD**

**Respondent**

**AND**

**THE CANADIAN REAL ESTATE ASSOCIATION and  
REALTYSELLERS REAL ESTATE INC.**

**Intervenors**

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**WITNESS STATEMENT OF EVAN SAGE**

**SAGE REAL ESTATE**

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I, Evan Sage, of the City of Toronto, Province of Ontario, state as follows:

1. I am a Vice President and Sales Representative at Sage Real Estate.

2. I have been in the real estate industry for the past ~~7~~ 10 years. I began my career as a Sales Representative at Royal LePage Real Estate Services Ltd. Central Branch and then was a Sales Representative at the Johnston & Daniel Division of Royal LePage Real Estate Services Ltd.
3. I am a member of TREB, and am ~~am~~ was a member of TREB's initial VOW Task Force.

### **Sage Real Estate Business Model**

4. Sage Real Estate was founded in 2010 by myself, my father Larry, and my brother Brad. We currently have approximately ~~80~~ 90 real estate agents.
5. We are an innovative brokerage that is ahead of the curve in incorporating technology into the delivery of real estate services. We have been called “the most philosophically and technologically advanced brokerage in the city of Toronto.”
6. Today's consumer is web focused, and consumes media through the internet. 87% of Buyers use the web during their home search. Consumers expect a better online experience when searching for a home, and our brokerage uses new technology to deliver just that.
7. Homes listed for sale by Sage Real Estate enjoy a property-focused integrated marketing campaign to ensure maximum exposure by leveraging both traditional and digital tactics. Because 87% of buyers use the web during their home search we focus an incredible amount of time and effort making sure our listings get maximum exposure online. Every home listed by Sage Real Estate has its own website hosted on its own domain name i.e. [www.218CottinghamSt.com](http://www.218CottinghamSt.com). On this website we are able to provide comprehensive information about the home as well as the neighbourhood where the home is located. The website features a detailed description of the property, professionally taken photographs, a

YouTube Video, 3D tours, floor plans, contact information for the sales representative, a map of the area, and information about the neighbourhood. When buyers purchase a home they are not just buying 4 walls and a roof they are buying into the lifestyle that home in that location provides. And that is what we want to convey through our marketing efforts and particularly on the individual listing websites. The home's website is also optimized for the most relevant keywords related to the home to help it show up high in Google search results.

8. Sage Real Estate provides the home seller with analytic reports showing how people are engaging with their home's individual listing website. These reports deliver statistical information about the results of our marketing strategies. These reports will identify exactly how many people came to visit the site, where they came from and how engaged they became with the site. This allows Sage to focus their marketing efforts on what works and where the potential buyers actually come from.
9. Sage Real Estate also promotes its listings through Facebook, YouTube, LinkedIn, , Pinterest, SlideShare, Postcards, Feature sheets, Lawn signs, Google Pay Per Click, Kijiji, Craigslist, QR Codes, our brokerage website, Zoocasa, Realtor.ca, RealtyStock, and e-mail.

**9.1 Since the initial hearing Sage Real Estate has deployed some additional social media tactics to market homes listed for sale with our salespersons. We coach our agents to get their clients involved in leveraging their own social network by promoting the listing through the client's own social media accounts (Facebook and Twitter, for example). Also, for some listings Sage Real Estate now uses paid Facebook advertisements, and paid YouTube advertisements.**

10. Our integrated marketing approach gets results for our clients. Our analysis shows that houses listed by Sage Real Estate are on average on the market for ~~11~~ 3 fewer days as compared to the TREB average days on market, and when you compare the percentage of asking price Sage get its clients ~~4%~~ 2% more as compared to the TREB average.

#### **~~VOW data feed~~**

~~11. We currently are not subscribed to TREB's VOW feed. We are waiting to see how the market reacts to the VOW option, and particular whether there is customer demand for VOWs. Our understanding is that VOW's were a moot point in the US and we are careful about what we invest our time and money in. It is something that we may consider if we feel it would be valuable to our consumers.~~

#### **Redesign of the Sage Real Estate Website**

**11.1 Since the initial hearing, there has been a complete re-design of the Sage Real Estate website, geared towards generating more home buyer leads. The Sage Real Estate website currently has as its main feature a property search tool with an extensive collection of real estate listings from Toronto, and across Canada. The interface of the property search tool is somewhat similar in concept to the interface for Realtor.ca and some of the VOWs currently being used by our competitors.**

**11.2 Sage Real Estate's property search tool is currently populated by listings from TREB's IDX feed, and from CREA's Data Distribution Facility ("DDF") feed. Both of these feeds are permissions-based feeds, which means that we obtain listings information of all of the brokerages that are part of the TREB IDX and CREA DDF, and all of those**

brokerages also receive listings information for properties listed for sale by Sage Real Estate.

11.3 Having access to CREA's DDF has allowed us to expand our scope beyond Toronto.

We currently have a referral network set up throughout Canada with various local brokerages. [confidential level A start

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [confidential level A end]

11.4 Sage Real Estate's current website is a good tool for generating buyer leads, and it is also a good tool for attracting new salespeople to the brokerage.

11.5 Sage Real Estate is currently working on the next generation of our website, which will expand and improve on our current property search tool. During the course of this upgrade, we will consider adding additional data feeds, including data feeds from the City of Toronto (which has a wealth of data feeds covering such things as transit lines, school locations, distance to hospitals and fire houses, etc) and we will also consider incorporating TREB's VOW data feed at that same time.

**Access to MLS data**

12. Sage Real Estate salespersons, myself included, establish a relationship with a potential client before we provide someone with listing information from the TREB MLS, or provide them with Comparative Market Analyses for properties. To protect the privacy of our clients anonymous people cannot just walk off the street and obtain MLS data from our salespeople.

13. We think that in order to access any information on a VOW the consumer should enter a legitimate email address and name.
14. We think that the individual seller should be able to decide if they want their information made available through the VOW feed or not. This could be permitted in the listing paperwork, or not.
15. We think that if the consumer grants informed permission to use the information, then everything should be accessed, including listings that are sold, pending sold (however they would have to be removed if the deal doesn't close), withdrawn, expired, terminated, suspended and the cooperating brokers offer of commission.

### **Market Report**

**15.1 During the initial hearing, I gave evidence about a Market Report newsletter that Sage Real Estate emails out, if requested, to the existing contacts of our salespeople. The Market Report provides statistical trends over the previous month for a variety of neighbourhoods in Toronto. The Market Report newsletter contains aggregated statistics for the neighbourhood, as well as some individual transaction-level information about properties that sold in the neighbourhood.**

**15.2 At the time of the initial hearing, one of the pieces of information that Sage Real Estate provided in its Market Report was a chart including the street address of properties that had sold in the neighbourhood the previous month, as well as the list price and sold price for those properties.**

**15.3 We are of the view that the version of Market Report we sent out at the time of the initial hearing was compliant with our requirements under RECO and privacy legislation.**

However, we developed the sense that there is a high degree of uncertainty about what is specifically allowed by RECO and under the privacy legislation. Based on the view that it is better to be safe than sorry, in 2013 Sage Real Estate removed the street number from its Market Report, and instead included just the street name for sold properties. After further consideration of the issue, and because we want to be absolutely certain that we are on the right side of the privacy laws and RECO rules, we are planning on completely eliminating the address column from our Market Report going forward. A reader of the new version of Market Report will know that all properties in the chart were sold within a given neighbourhood, but there will be nothing to pinpoint where those properties are located within the neighbourhood.

### Commissions

16. Sage Real Estate is a traditional full service Real Estate Brokerage and our salespeople have complete discretion to negotiate their commission rates with clients on an individual basis.
17. In my experience, the amount of commission is something that is negotiated between the salesperson and the client. Commission is not a flat rate.
18. In my experience, the amount of commission to the listing salesperson varies widely.
19. In my experience, the amount of commission to the cooperating salesperson also varies widely.
20. The cooperating salesperson's commission is almost always paid out of the commission received by the listing salesperson. However, the cooperating salesperson's commission is addressed in the buyer representation agreement. If the cooperating salesperson does not get paid the full amount as agreed in the buyer representation agreement from the listing

salesperson, then the buyer is responsible for any deficiency. This clause is always contained in a buyer representation agreement, and the amount of commission is subject to negotiation between the buyer and the salesperson.

SIGNED THIS, this 15th day of May, 2015.

A handwritten signature in black ink, appearing to read "Evan Sage", written over a horizontal line.

EVAN SAGE  
VICE PRESIDENT AND SALESPERSON  
SAGE REAL ESTATE



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**THE TORONTO REAL ESTATE BOARD****Respondent**

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**THE CANADIAN REAL ESTATE ASSOCIATION AND  
REALTYSELEERS REAL ESTATE INC.****Intervenors****UPDATED WITNESS STATEMENT OF EVAN SAGE  
SAGE REAL ESTATE****AFFLECK GREENE McMURTRY LLP**  
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