CT-2011-003

THE 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 multiple listing service of the Toronto Real Estate Board.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

RECEIVED / REÇU
CT-2011-003
February 6, 2015

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT # 297

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE TORONTO REAL ESTATE BOARD

Respondent

- and -

THE CANADIAN REAL ESTATE ASSOCIATION

Intervenor

SECOND WITNESS STATEMENT OF WILLIAM McMULLIN

February 2015

VIEWPOINT REALTY SERVICES INC.

I, William McMullin, of Bedford in the province of Nova Scotia, state as follows:

- 1. I am the founder and Chief Executive Officer of ViewPoint Realty Services Inc. ("ViewPoint"). For the past 20 years or so, I have been an entrepreneur operating a number of startup businesses focused on technology. In 2008, I established ServicePoint Inc. and in 2009, started its subsidiary, ViewPoint Realty Services Inc. ViewPoint operates from offices in Bedford, Nova Scotia.
- 2. This statement updates my evidence provided to the Tribunal in my witness statement signed on June 18, 2012 and updated during my testimony on September 10 and 11, 2012. I have also followed up on a number of matters raised by the Tribunal and by counsel during my testimony.
- 3. In my 2012 witness statement I described ViewPoint's business and website (viewpoint.ca) and how ViewPoint uses technology to improve the efficiency of brokerage operations includin attracting, servicing and retaining customers. ViewPoint is a web-centric real estate brokerage in Nova Scotia. We base our business model on viewpoint.ca and it is still the principal way we attract customers to our brokerage business. Our model revolves around the belief that real estate consumers want direct access to comprehensive and up-to-date information so they can make well-informed and timely decisions respecting the acquisition or sale of real estate. Our brokerage's ability to provide access to that information efficiently through the Internet, use technology to provide enhanced tools and information analysis, and focus our agents on serving clients rather than generating leads, attracts home buyers and sellers to our brokerage in increasing numbers.

The Information Displayed on Viewpoint.ca

4. Viewpoint.ca continues to display real estate listing data obtained from two sources. First, the multiple listings service ("MLS") databases operated by the Nova Scotia Association of Realtors ("NSAR") and the Annapolis Valley Real Estate Board ("AVREB"). The MLS databases are comprised of extensive information about the listing and sale of residential real estate in Nova Scotia, including properties that are currently listed for sale, as well as properties that have been sold, those conditionally sold and those which were on the market but did not sell. The MLS data is received both in bulk on a daily basis and "live", meaning that viewpoint.ca is

updated constantly throughout the day as listing information is entered and updated in the MLS systems.

- 5. Second, municipal and provincial government data. The provincial data includes land registry data and is provided in bulk once a month by the provincial government. This data includes the geometric polygons representing the boundaries of every property in Nova Scotia. It now includes the price at which a property sold, based on the Affidavit of Value sworn by the buyer at the time of closing which is required by statute to be reported. Because the data is provided once a month, the sold prices lag behind the MLS data and are anywhere from a few days to a month behind current property closings and registrations with the land registry. Since 2012, the municipal government data has been expanded to include zoning information and tax expense information.
- 6. Viewpoint.ca integrates property, MLS and other datasets and then the data is overlayed on Google Maps. As a result of the "live" MLS feed, Viewpoint.ca provides current information on the changing status of current listings (price and status changes and reporting of final sold prices) which are important to consumers. The provincial data alone is insufficient to meet consumer requirements for information as it does not include the pending sold data, nor data about current listings as the MLS data feeds do, nor about past listings in the MLS so that a buyer can see the history of a property, such as how many times it was listed or sold. This information is critical to buyers to determine which houses are still available for sale, whether or not they should make an offer, and how much that offer should be; and it is critical to sellers, for instance in determining an appropriate list price. Consumers have come to expect convenient access to this information. The significant usage of viewpoint.ca is the basis for the significant and continuous investment we have made in building and improving the website.
- 7. I am aware of other brokerages in Nova Scotia that now receive data feeds from the NSAR and at least one brokerage that has data feeds from both the NSAR and the AVREB. At least one other brokerage is receiving property information from the provincial government.
- 8. ViewPoint no longer uses the TREB VOW datafeed in its day-to-day operations because the brokerage that was, in 2012, listing Nova Scotia properties on the TREB MLS system is no longer doing so. We therefore do not need to access TREB's VOW datafeed to ensure

viewpoint.ca has a complete set of active listings for properties in Nova Scotia, something very important to buyers.

Developments in ViewPoint's Business since 2012

- 9. Since 2012, ViewPoint Realty has grown its brokerage business and gained market share in spite of a significant decline in the volume of real estate sold in Nova Scotia in both 2013 and 2014. I believe our success and growth is due to ViewPoint's unique value proposition:
 - a) our ability to provide comprehensive and up-to-date property and listing information and analysis over the Internet; and
 - b) the breadth and depth of the information and tools we make available to both consumers as well as agents which are part of our brokerage.
- 10. As I describe below, we continue to innovate and introduce new features to reinforce the value proposition we deliver.

Continued Innovation and New Features on ViewPoint.ca since 2012

Client Advantage Service on viewpoint.ca

- 11. Viewpoint.ca currently provides services to three different types of users:
 - a) Unregistered users. These are anonymous visitors who are able to access basic information such as the lot size and assessment value of every property in Nova Scotia. These users can also access some information on those MLS listings which are part of the Internet Data Exchange (IDX) program. Only about 70% of listings are subject to IDX. IDX listings include only current listing information, not historical MLS listing information. Unregistered users do not have access to any property-specific sold or historical MLS information.

- b) Registered users. These users have created a user account by providing their name and email address and then verifying their email address. Registered users are able to view all of the information unregistered users can, as well as access all currently active MLS listings, historical listing information including sold prices, dates of previous sales and historical assessment information. The additional information provides a significant incentive for consumers to register.
- c) Client Advantage users. This is a new service offering added in February 2014 and described below.
- 12. The Client Advantage program allows home buyers and sellers to obtain additional property and listing information and additional features through viewpoint.ca, by providing additional information about their needs (such as when they intend to buy or sell) and contact information including a telephone number. The purpose of the program is to offer more to those consumers who are willing to make a soft commitment to using an agent from ViewPoint to represent them in a future real estate transaction.

- 14. Client Advantage includes access to:
 - recently expired, cancelled and withdrawn listings;
 - an online CMA (comparative market analysis) tool;
 - unlimited access to on-demand property reports prepared by viewpoint.ca;
 - a list of entries in the land registry for each property;
 - an ability to follow up to 250 properties that a buyer may be interested in; and
 - access to ratings on listings based on price, quality and conditions, plus comments made about properties by other registered users on viewpoint.ca.

- 15. Attached as Exhibit "A" is a matrix comparing the services offered to unregistered users of ViewPoint.ca, registered users and those using the Client Advantage program.
- 16. As at December 31, 2014, 1,100 individuals had requested access to our Client Advantage program and of these, 452 were granted access by a ViewPoint agent.
- 17. In a traditional brokerage, most of this information would have to be obtained, for each property that a buyer may be interested in, from an agent. For MLS information that is not on realtor.ca such as the sales history, the agent would have to get access to the MLS system, search for the property, and provide the information to the client either by hand, email or verbally. Tax assessment information would be a separate inquiry, apart from current assessment information which may be in the MLS system. On viewpoint.ca, the information is all together and is obtained by the buyer him- or herself, by simply clicking on the property and either scrolling down, or clicking on the "cut sheet" button.
- 18. This information in this format and accessible so easily is very helpful to a buyer and saves our brokerage and our agents immense amounts of time since the buyer is able to look up this information by him or herself instead of involving an agent. On average, registered users spend approximately 19 minutes on the site during each visit and they visit the site 10 times monthly.

New Comparative Market Analysis Tool on viewpoint.ca

- 19. A new tool on viewpoint.ca since 2012 is our online CMA tool. This is available to individuals who are members of the ViewPoint Client Advantage Program.
- 20. After entering the address of a property or its property identification number, a customer enters a radius around the property and clicks "search". The result is properties nearby that may be comparable, including their current status, list or sold price, number of days on market, square footage, number of bedrooms and bathrooms, and other statistics for the area such as average days on market, average and median listing price, average and median selling price.

- 21. This service is very helpful to sellers who want to see what other properties in their neighbourhood have sold or been listed for, and for buyers to see comparable homes in a certain neighbourhood. Rather than asking an agent to do all the work, viewpoint.ca automatically creates a list of possible comparative properties, which can then be used by the seller or buyer. An example is attached as Exhibit "B". Buyers and sellers value having convenient online access to this information.
- 22. The list may also be clicked to find a map of the subject property and each of the surrounding properties, to give the person a sense of the neighbourhood and what is within the radius chosen. An example of a map is attached as Exhibit "C". Each property is highlighted in colour (red for properties that have already sold, blue for properties currently for sale). Each of the properties is listed and may be scrolled through, or each may be clicked for detailed information.

Showing Request Tool

- 23. The ability to access full MLS information in machine-readable formats has enabled our brokerage to significantly streamline our internal operations, reducing costs and improving service quality to consumers. For example, we have developed a highly automated and widely used tool using this data which enables our agents to manage showing requests.
- 24. Specifically, when a buyer submits a request to see a property, our software system will retrieve the property-specific showing instructions including the name and contact information for the listing agent. Our software will immediately dispatch an email message to the buyer's ViewPoint agent. The message contains all the information necessary for the agent to action the request. If we did not have full access to MLS information, our agents would have to manually retrieve showing instructions and status information. In particular, if the data feed does not provide detailed information about the status of a listing (whether it is pending sold upon meeting of standard conditions or pending sold subject to the sale of the purchaser's property) we risk aggravating our clients and lost productivity from having to advise clients of status information after they have booked a showing which would result in showings being cancelled because many buyers do not want to view a property which is conditionally sold.

ViewPoint Neighbourhoods on viewpoint.ca

- 25. ViewPoint Neighbourhoods displays neighbourhood data online for 27 areas around Nova Scotia. A table of information is accessible to anyone who uses the site (both registered and unregistered users) that includes the number of properties in total, how many are for sale, average list price, the highest and lowest list prices, the number of properties sold, average sold price, average days on market and sold price as a percentage of list price.
- 26. This table is built using data, including sold and pending sold price data, from the MLSs and from government sources. It is updated every day and uses information over the past 12 months to calculate statistics for each neighbourhood.
- 27. Registered users may click on each neighbourhood and find information about it, including a map; a monthly trend bar graph comparing number of listings and number of sales; examples of the latest listings in the neighbourhood; and a sense of the affordability of the neighbourhood showing three examples of the cheapest, average and most expensive property listings. A person may click any of the example properties to see additional details. Additional information for sellers is also provided, including how many properties were sold last year, the average listing price and average days on market.

ViewPoint Market Data on viewpoint.ca

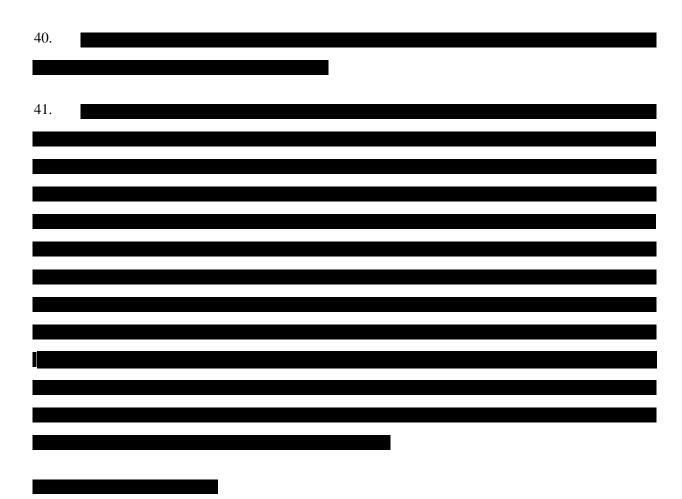
28. We also now have a service called ViewPoint Market Data which provides a range of aggregate metrics for the Nova Scotia real estate market. Metrics include number of listings, sales, withdrawn, expired and cancelled listings year-to-date and the aggregate dollar volumes for each group. Some agents have used these metrics to assess the current state of the market relative to prior periods. The service is available to both registered and unregistered users.

Growth of ViewPoint's Business Since 2012

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Nature of the Services Offered by ViewPoint

- 42. ViewPoint has changed its service offerings somewhat since 2012. We now have two service options for sellers. The first is our Private Sale service for which we charge a flat fee of \$1,000 and target sellers who want to represent themselves and reduce their selling costs. The seller's property is advertised on viewpoint.ca (but not on the MLS) for up to six months and is highlighted on the viewpoint.ca map. The seller has control over price changes, description and photos for the listing. If ViewPoint receives inquiries about the property, they are sent to the seller directly. In the Halifax area, ViewPoint provides a lawn sign and professional photograph of the property. ViewPoint is the only real estate brokerage in Nova Scotia which offers sellers to the ability to list their property privately without the assistance of an agent.
- 43. ViewPoint's second service for sellers is Full Service Listing. This service includes listing on both the MLS and on viewpoint.ca. A ViewPoint agent prepares the listing, arranges

professional photography, and handles inquiries and showings, paperwork, offers and counteroffers and so on. We charge a commission negotiated by the individual agent contingent on the sale of the property and paid on closing. In practice the result has been, in general, a commission paid by the seller of between 4% and 5% of the sold price of the property. ViewPoint's general policy is that agents make an offer of commission in the MLS system to cooperating brokerages of 2% or more in order to maximize the chances that the cooperating brokerage or agent will locate and bring a qualified buyer to the seller.

- 44. ViewPoint's Full Service Listing is now more expensive on a percentage commission basis than in 2012. There are a number of reasons, including the addition of experienced agents who have a reputation for providing traditional listing services, that the majority of sellers prefer to pay higher fees contingent on sale rather than a lower flat fee up front, and that the current market in Nova Scotia favours buyers which leads more sellers to choose a traditional listing arrangement because they believe the sales and marketing efforts of a higher-priced agent may be needed to affect the sale. In my experience, sellers fear (often wrongly) that lower-priced brokerages do not provide the same level of sales and marketing exposure and in a buyers' market may not end up selling their house.
- 45. For buyer clients, we could not see a clear competitive advantage in offering rebates. The real advantage to buyers in the marketplace was (and is) to provide a better value proposition, more immediate and better information, transparency and overall better service to customers through viewpoint.ca. Sell side transactions (representing buyers) also typically require more agent hours per transaction than the listing side (representing sellers), and we felt that offering buyer rebates were detrimental to our ability to attract new agents to ViewPoint. We therefore decided not to continue offering rebates to buyers.
- 46. Another factor influencing ViewPoint's business model and limiting our ability to grow our business is our inability to expand geographically. Being confined to Nova Scotia limits the employ of more efficient business models which depend on greater scale in terms of users and website traffic. Our investment decisions assumed we would be able to expand geographically. For example, the technology platform supporting viewpoint.ca has the capacity to support a much larger volume of users than we currently serve. Until we have access to larger market

centers outside of Nova Scotia, in particular, the Greater Toronto Area, there will be little to no interest by either investors or large advertisers. The Greater Toronto Area real estate market is nearly 20 times larger in dollar volume than the entire Nova Scotia market.

Other Real Estate Board Memberships

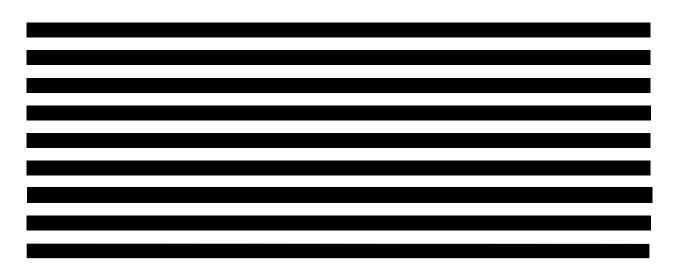
47. In 2012, ViewPoint was a member of the Realtors Association of Edmonton and the Greater Moncton Real Estate Board. We have relinquished our membership in both, because there was no progress towards obtaining the data required to operate our business model and there was no realistic prospect of getting that data. It was therefore no longer worthwhile to pay membership dues and other expenses. For Greater Moncton, we obtained access to property data from the New Brunswick provincial government, but could not get the necessary MLS data from the GMREB. We have also discontinued our subscription to the New Brunswick property data as this data is of no value unless we have access to MLS data.

Possible Expansion of ViewPoint into Toronto

49. Since 2012, ViewPoint has not entered the residential real estate brokerage business in Toronto. In my 2012 witness statement, I stated:

ViewPoint would like to offer our web-centered brokerage model in Toronto, as part of our expansion from Nova Scotia into key markets across Canada. At this time, we cannot do so in Toronto in a commercially viable way, due to TREB's VOW Policy and Rules and the lack of content in the VOW data feed offered by TREB to its members. Specifically, we need data about properties that have sold (including recently sold properties) and other data such as price changes that are provided in "real time", in order to compete effectively using our brokerage model. The data we are restricted from accessing is available to competing brokerages that rely on Realtors to disseminate such information. If we could access all of the MLS data through an efficient means ... I believe that ViewPoint would have the basis for competing in that market. Without it, we will have no realistic basis for competing effectively.

50. This statement remains true today.



52. The data in Teranet's possession does not include TREB's MLS data. More specifically, as I explained in my testimony in 2012 the TREB data feed includes: (i) data on sold properties, including the details of the listing that are required for CMAs and the sold price as soon as the sale has closed (while Teranet's data includes sold property prices, I understand there is a time lag between registration and when the registration becomes available from Teranet); (ii) data on pending sold properties (sales where an agreement of purchase and sale has been entered but the sale has not yet closed and been registered); (iii) data for home listings that have been withdrawn, have expired, been suspended or terminated; (iv) status changes for each current listing; and (v) price changes for current listings and contact information for the agent and brokerage which listed each property. None of this data is available from Teranet. These data elements are material to ViewPoint's value proposition and they can only be sourced from the TREB MLS.

Other Matters

- 53. There are a four other matters to update since the hearing in 2012. First, similar to what I described in my first witness statement, since 2012 ViewPoint has received a small number of calls and complaints about the information on viewpoint.ca.
- 54. Second, there was also a complaint made to the Privacy Commissioner of Canada by an individual who alleged that ViewPoint disclosed personal information without consent by

publishing the purchase price of the person's home on the viewpoint.ca website for view by registered users. ViewPoint cooperated fully with the investigation. The complaint was resolved during the course of the investigation. The file was closed and the Privacy Commissioner advised ViewPoint that no further action will be taken. ViewPoint was not asked by the Privacy Commissioner, nor did we take any action on our own initiative, to remove any information from viewpoint.ca or stop displaying anything on the website. No government agency, including any privacy agency, has ever asked ViewPoint to change its operations, its website or what is displayed on viewpoint.ca due to complaints or for any reason related to privacy.

- 55. Third, in 2012 we experimented with offering a service to professionals. We no longer promote this service although we occasionally get inquiries from professionals who wish to use the information on the website in the course of their professional activities. The information shared with professionals is now identical to the information shared with people registered on viewpoint.ca, as the Nova Scotia government now requires that the names of property owners only be available from its own website on a property-by-property basis. ViewPoint has added a service in which, for \$6, a service agent will manually retrieve ownership information from the government and email it to the customer.
- 56. Fourth, I understand there may have been changes since 2012 related to CREA's website, realtor.ca. It appears now to permit larger photographs than previously and I have heard that CREA claims now to be receiving data more often than once per day. I do not know the precise details.

SIGNED THIS 5 DAY OF FEBRUARY, 2015

WILLIAM McMULLIN

VIEWPOINT REALTY SERVICES INC.

EXHIBIT "A"

Exhibit "A" to the Second Statement of William McMullin

	Description	Unregistered Visitor	Registered User	Registered Client
Property Boundaries & Size	Parcel fabric showing lot lines overlayed on a Google Map	Yes	Yes	
Current Year Tax Assessment	Issued by assessment authority, Property Valuation Services Corporation	Yes	Yes	Yes
Active IDX Listings	IDX listings are a subset of MLS listings where the listing brokerage permits others brokerage to advertise their listings. Approximately 65% of listings in the MLS are IDX.	Yes	Yes	Yes
Historical Property Assessment & Tax Expenses	Assessment values for each of the last 8 years including an estimate of the tax expense.	Yes	Yes	Yes
Google Street View Imagery	Panoramic images as captured by Google at various points in time.	Yes	Yes	Yes
Bing Bird's Eye View	Aerial oblique images taken from a low flying aircraft from the four cardinal directions.	Yes	Yes	Yes
Assigned Schools	In HRM only, the elementary, junior and senior high schools which service the subject property.	Yes	Yes	Yes
Municipal Property Zoning and Service Information	Property zoning, by-law and municipal services schedules.	Yes	Yes	Yes
MLS® Listings in Nova Scotia	All MLS listings from both real estate boards in Nova Scotia		Yes	Yes
Real Time Updates	Display of new listings, price changes and sold properties as they are entered in the MLS.		Yes	Yes
Historical Cutsheets	Access to cutsheets for off-market listings, listings which are sold, expired, cancelled or withdrawn.		Yes	Yes
Sales History	Detailed threaded history showing each listing of a property and events which occurred during the listing, such as price and status changes.		Yes	Yes
Conditions on Pending Sales			Yes	Yes
Days on Market	Number of days since a property was listed.		Yes	Yes
Sold Prices	Display of the final selling price.		Yes	Yes
Instant Alerts	Notification via email that an event has occurred on a property.		Yes	Yes

ViewPoint Street View Imagery	Similar to Google Street View. ViewPoint has its own spherical imaging system.	Yes	Yes
Property Clicks	Number of clicks and followers of a property.	Yes	Yes
Land Registry Information	Access to type of ownership, migration status, property use and registered document events.		Yes
Comparative Market Analysis Tool	Tool which enables a buyer or seller to estimate the value of a property by looking at comparable properties in an area.		Yes
Property Reports	Detailed report summarizing real estate and click activity around a subject property.		Yes
Property Ratings	Ratings and reviews by users.		Yes

EXHIBIT "B"

Compare Your Property

The ViewPoint CMA tool gives you the best picture of your surrounding area

Search by Address or PID: Radius (m):
41108424 500

ADVANCED SEARCH

Critical Numbers

Properties:

Average Days on Market (median):

*Average Listing Price (median):

Average Selling Price (median):

*Last listing price

109 (72.5)

20

\$499,725 (\$499,900) \$487,010 (\$487,500)

FILTER	SHOW ORIGINAL		VIEW RESULTS ON MAP							Showing 1 to 15 of 20 NEXT »
Remove	s	tatu	s List Price	Sold Price	DOM	Address	Beds	Baths	Lot Size	PSF
		Sol	\$485,000	\$474,000	13	Lot Tt21 Thorndale Ter, Bedford	5	4	6,756	\$135
		Sol	\$429,000	\$424,000	27	11 Haystead Ridge, Bedford	4	4	4,928	\$157
		Sol	\$436,900	\$421,500	32	36 Haystead Ridge, Bedford	4	4	5,844	\$156
		Sol	\$534,900	\$509,000	42	441 Southgate Drive, Bedford	5	4	8,680	\$136
		Sol	\$579,900	\$550,000	51	152 Ravines Drive, Bedford	4	- 4	7,000	\$139
		Sol	\$509,900	\$490,000	51	260 Southgate Drive, Bedford	4	4	8,787	\$143
		Sol	\$454,900	\$443,000	52	35 Windridge Lane, Bedford	4	4	7,030	\$169
		Sol	\$549,900	\$540,000	56	112 Ravines Drive, Bedford	5	4	11,099	\$126
		Sol	\$539,900	\$522,500	66	418 Southgate Drive, Bedford	5	4	8,693	\$131
		Sol	\$459,900	\$456,800	70	15 Kingsbury Way, Bedford	5	4	6,631	\$145
		Sol	\$439,900	\$435,000	75	15 Haystead Ridge, Bedford	4	4	5,146	\$161
		Sol	\$495,000	\$495,000	82	116 Ravines Drive, Bedford	5	5	9,767	\$137
		Sol	\$486,000	\$476,000	88	199 Southgate Drive, Bedford	4	4	9,782	\$127
		Sol	\$519,900	\$510,200	111	337 Southgate Drive, Bedford	5	4	10,616	\$134
		Sol	\$569,900	\$548,000	113	26 Ravines Drive, Bedford	5	4	9,592	\$144

EXHIBIT "C"

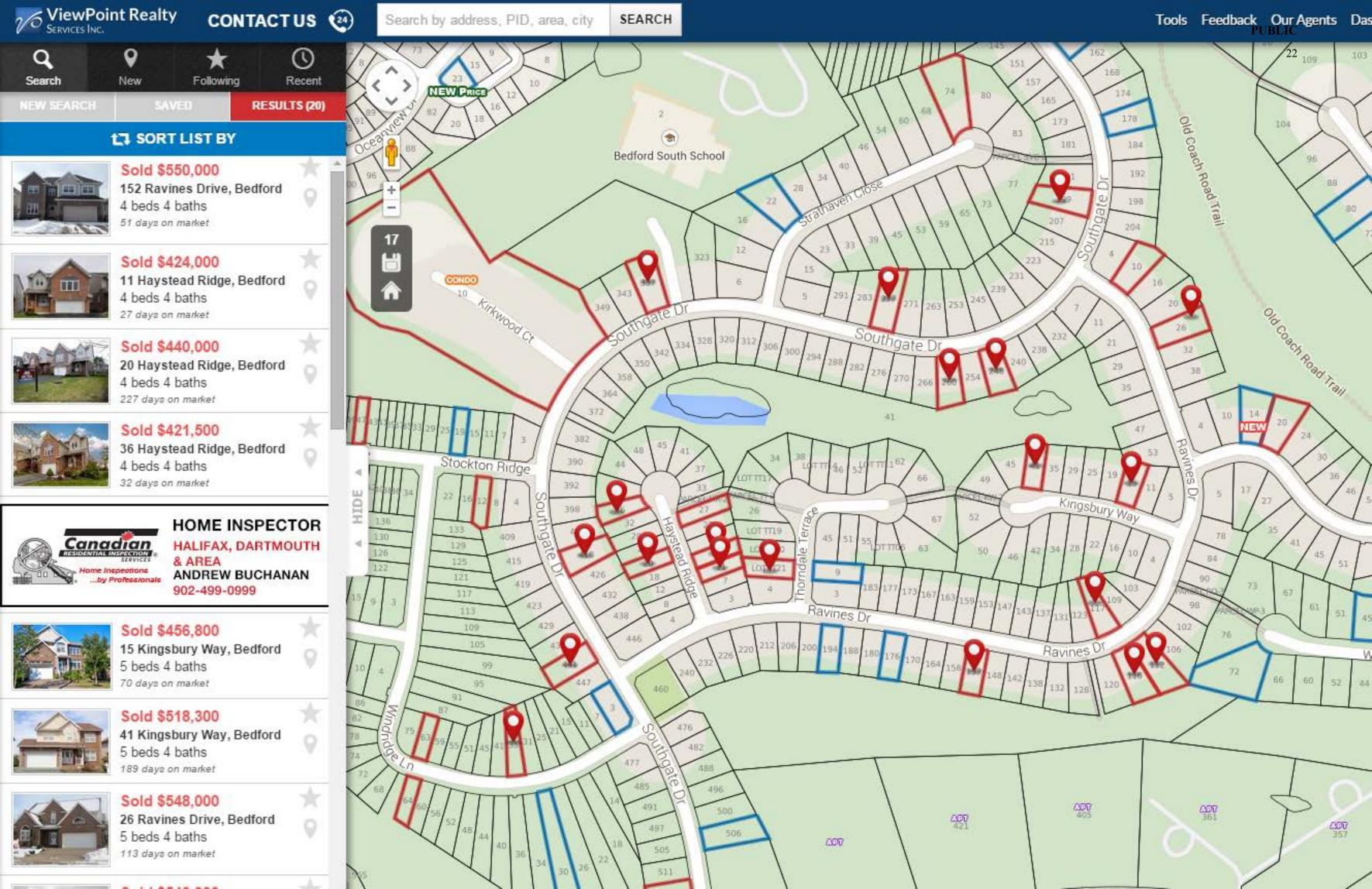


EXHIBIT "D"



EXHIBIT "E"









File No. CT-2011-003

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THE COMMISSIONER OF COMPETITION

Applicant

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Respondent

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Intervenors

SECOND WITNESS STATEMENT OF WILLIAM McMULLIN, VIEWPOINT REALTY SERVICES INC.

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